S. HRG. 101-160

FCC AUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

AUTHORIZATION OF THE FEDERAL COMMUNICATIONS COMMISSION FOR FISCAL YEARS 1990 AND 1991

MAY 17, 1989

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FCC AUTHORIZATION

WEDNESDAY, MAY 17, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:01 a.m., in room SR-232A, Russell Senate Office Building, Hon. Daniel K. Inouye [chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Tom Cohen, staff counsel and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. This morning's hearing of the Communications Subcommittee will address reauthorizing the Federal Communications Commission for fiscal year 1990 and 1991.

The President has asked that we fund the Commission at a level of $109,831,000 for fiscal year 1990 and $117,831,000 for fiscal year 1991. Both of these amounts represent increases over current authorization levels. The increase for fiscal year 1990 is to fund pay increases and the retirement program. The much larger increase for the next fiscal year is to cover the major costs of consolidating the Commission in a single building.

I am introducing legislation today to reflect these amounts requested by the administration. This legislation also provides for the extension of the travel reimbursement program, the program to permit the Commission to use the skills of older Americans and the authority to relocate the Hawaii monitoring station.

Since we last passed reauthorization legislation, the Commission has completed many important proceedings. I am certain the members of the subcommittee will want to discuss such matters as the decision on AT&T's tariff 12, the new rules for alternative operator service providers, and the decision to reallocate spectrum from the amateur radio service.

The Commission also has a host of vital proceedings pending. Of particular interest are the proceedings on using lotteries to award broadcast licenses and to extend the price cap proposal to local dominant common carriers.

As you all know, the Chairman of the FCC, Mr. Patrick, has submitted his resignation letter to the President, and he intends to leave when his successor is confirmed. This then may be his last hearing before the subcommittee. And I want to welcome Mr. Patrick this morning, and I want to wish him good luck and good fortune on his future endeavors. I look forward to hearing your testimony, sir.

I would like to insert openings statements from Senators Hollings and Pressler in the record at this point.

[The statements follow:]

OPENING STATEMENT BY THE CHAIRMAN

I want to thank the Chairman of the Subcommittee for holding this hearing on reauthorizing the Federal Communications Commission. Eight years ago, this Committee initiated the biennial authorization process for the FCC. Since then, this legislation has proven to be an important and effective way to oversee the actions of the Commission and to make changes in the Communications Act.

It is evident to everyone that Congressional oversight of the Commission is now more important than ever. Not only does the Commission deal with vital issues, it, unfortunately, has often done so in less than a reasonable manner. Far too many decisions of the Commission are based more on theory than fact. At those times, Congress has had to intervene to get the Commission back on the right track. I can assure everyone that active Congressional involvement will continue.

More specifically, I have concerns about a host of Commission actions. First of all, this FCC has tried constantly to diminish the public interest requirements for awarding broadcast licenses. In the recently decided *Marco Island* case, the Commission permitted a party that had not even bothered to file an application to buy out all the other parties in a comparative hearing. Now, the Commission has proposed to use lotteries to award licenses. This all goes in the wrong direction, away from determining the best person to operate a broadcast station. These actions are opposed by the broadcasters, the bar, and virtually everyone else because they are simply wrongheaded. It is clear that this has to stop.

The Commission is also gung ho on applying the price cap method of regulation to local telephone companies despite the fact that these carriers face virtually no risk under such a scheme and that the same incentives present under rate of return regulation will remain. Comments are now being accepted in this proceeding. I can assure everyone I will be watching this matter very carefully.

The Commission has also been less than responsible in its tariff review, often using it to set new policies. Last Congress, we passed legislation to remedy certain flaws in this review process. I believe we need to determine whether further remedies are necessary.

I could go on and on about a variety of Commission actions in the broadcast, cable, common carrier, private radio, and spectrum areas. What is clear is that this Commission has decided to go where no Commission has gone before and for no good reason—its actions often do not make common sense and do not serve the public interest. As I stated earlier, I will be vigilant and prepared to step in where necessary to ensure the public interest is served.

OPENING STATEMENT BY SENATOR PRESSLER

Mr. Chairman, I would like to take this opportunity to commend Dennis Patrick as he nears the end of his tenure as FCC Chairman. Although his relations with members of Congress have not always been the most cordial, he has displayed an increasing sensitivity to Congressional concerns while maintaining his commitment to those communications policy goals that he and the administration considered most important. That is not an easy task.

I particularly want to thank Chairman Patrick for his attention to the concerns of small telephone companies and cooperatives during the formulation of the price cap regulations. He has committed the FCC to maintaining the safeguards that protect less populated areas of the country, such as my home state of South Dakota, from the dangers of rate deaveraging. I intend to see that the new commissioners on the FCC are just as committed to those safeguards.

Speaking of new commissioners, I encourage President Bush to send some names to this committee quickly. We need to get some people confirmed, so that the FCC can proceed with a full commission.

With that I will close my comments, Mr. Chairman. I look forward to Chairman Patrick's testimony on the FCC's budget request.

Senator INOUYE. Chairman Patrick, you may proceed in any fashion you wish.

STATEMENT OF HON. DENNIS R. PATRICK, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY ALAN McKIE, DEPUTY MANAGING DIRECTOR; PETER PITSCH, CHIEF OF STAFF; DIANE KILLORY, GENERAL COUNSEL; GERALD BROCK, CHIEF, COMMON CARRIER BUREAU; ALEX FELKER, CHIEF, MASS MEDIA BUREAU; AND THOMAS STANLEY, CHIEF SCIENTIST, OFFICE OF ENGINEERING AND TECHNOLOGY

Mr. PATRICK. Thank you and good morning, Mr. Chairman, and members of the subcommittee.

I am pleased this morning to appear before you to discuss the reauthorization of the Commission for 1990 and 1991. With me today are office and bureau chiefs. They include Alan McKie, our Deputy Managing Director; Peter Pitsch, Chief of Staff; Diane Killory, General Counsel; Jerry Brock, Chief of the Common Carrier Bureau; and Lex Felker, Chief of our Mass Media Bureau.

As you indicated, Mr. Chairman, this will, I expect, be my last appearance before you as Chairman on a biennial reauthorization of the Commission. I would, therefore, like to take this opportunity to focus your attention on perhaps the most significant challenge that my successor will face. That challenge is simply this: how to effectively carry out the FCC's public interest mandate with the very important responsibilities that this institution has given the Commission, given a growing and rapidly changing telecommunications industry and an increasingly austere fiscal constraint situation.

Two years ago in April of 1987, at our last hearing for reauthorization, I first appeared before you as Chairman, and on that occasion I made clear that my overriding goal in compliance with the Commission's statutory mandate was to maximize the benefits that the public derives from our Nation's communications facilities and services. I noted my belief that consumer welfare and the public interest are what should count in guiding those deliberations. I also noted that in an age of budgetary stringency, it is essential the Commission carry out its responsibilities in an efficient and expeditious manner.

Today, two years later, notwithstanding the fiscal austerity that the entire Federal Government suffers, we have largely accomplished these goals through effective leadership and management, increased use of automation and technology and above all, a dedicated and talented staff which is now working harder than ever. We have accomplished much since April of 1987. And, I have attached to my testimony a four-page summary of some of those accomplishments.

In contrast to other agencies whose missions are static or shrinking, our workload is continually increasing, as you know, Mr. Chairman, in particular, reflecting the dramatic growth in telecommunications generally and the demand for new uses of radio as technology improves.

But much more can and should be done in the U.S. and that will require an active role for the Commission and, of course, Congress.

Continued pricing reform, adoption of incentive-based regulation, relaxation of the divestiture restrictions on the regional Bell operating companies, all of these can foster more efficient management and innovation by the telephone companies and reduce America's business telecommunications costs.

Likewise the Commission must build on its record of accomplishment in managing the radio spectrum. Better inventory management, lower labor costs, prevention of theft and energy savings are advantages American business enjoys from high quality telecommunications services. A variety of new spectrum uses are pending at the Commission. Most notable is high definition television which, of course, the Congress has a great interest in, and well it should.

In sum, I believe the Commission has done a good job with its existing resources, but because of the technological challenges we face and the legal and regulatory role we must play, we now require additional resources, as you indicated in your opening statement, Mr. Chairman. The Commission can no longer accommodate the industry growth and the demands placed upon us by new technologies without some increase in resources for staff, automation, technical equipment and fixed cost increases. To paraphrase, we have gone about as far as we can go with the limited resources we have.

As you know, Congress appropriated $99.6 million for the Commission in 1989, the same amount it appropriated in 1988. However, because of fixed cost increases, such as the federally mandated pay raise and health benefit increases, we actually began this fiscal year with a $5 million shortfall. In response, we implemented a hiring freeze, requested and received early-out authority from OPM, and further reduced other operating accounts.

Yet, we still had a shortfall of $1.4 million. The shortfall translated into five no-pay furlough days for all Commission employees. And, as that action would be very detrimental to the public in terms of further slowing our processing of applications, we requested a $1.4 million supplement for 1989 which was included in the fiscal year 1990 budget request.

This deficit, I am happy to report, Mr. Chairman, has been reduced by our actions to about $495,000 due to higher than anticipated savings from employees taking advantage of early-out authority and other personnel savings. I must say that those savings have been particularly painful to the agency in terms of our manpower and our capacity to process the business before the Commission. But, nonetheless, in terms of dollars, we have reduced the deficit from $1.4 million to about $500,000.

If the Commission does not receive a budget supplement for the $495,000 shortfall, we will have no alternative but to furlough all Commission employees for at least two days. Of course, we will continue to monitor all accounts and attempt to further offset the shortage. However, we do not anticipate any significant additional savings from any other accounts. We have already reduced them to a bare minimum.

For example, just to give you some idea of how far we have gone, Mr. Chairman, we have zeroed out all technical equipment and vehicle purchases. We have reduced our ADP equipment purchases by 75 percent, reduced our travel accounts by 46 percent, supply by 24 percent, and on and on. And you have that in the written testimony.

We eliminated all station changes in the field, and we deferred purchase of our optical image system for recording our dockets.

Moreover the substantial fiscal year 1989 shortfall occurred after a long period of steadily declining FCC staff size. In the early 1980s, we were authorized and received funding for about 2,000 full-time permanent employees. By contrast, by this October we expect to be down to about 1,620 full-time permanent employees, a staff reduction of about 20 percent at a time when the responsibilities of the Commission are increasing exponentially as a result of technology. Without additional staffing, our speed of service will necessarily deteriorate. Backlogs will necessarily increase in almost every area of the Commission's activities.

My full statement describes our fiscal year 1990-1991 authorization request, including the proposed $10 million budget increase for 1990. This will enable the Commission to meet uncontrollable personnel and other cost increases and restore funds to base accounts that were reallocated in 1989 to meet our personnel compensation requirements. It will also provide for essential programmatic increases in technical equipment and maintenance for automated data processing capability, all of which were deferred in 1989 due to our budget reductions.

Restoration of these essential items in the Commission's budget will be critical to improve the Commission's productivity and speed of service, and I might say, more importantly, just to keep pace with the rate of increasing business before the Commission.

My statement also describes other provisions of our draft authorization act, as well as what else the Commission can do to help raise needed revenues. On the plus side, I would mention our successful FCC fee collection program, which to date has resulted in our collecting about $100 million in fees, almost our annual request for fiscal year 1990, and the administration's competitive bidding proposal that has the potential to raise substantial revenues as well.

In conclusion, Mr. Chairman and members of the subcommittee, I would like to end on a more personal note. I would like to thank you for your input and your interest in the Commission's affairs over the past two years of my chairmanship. Admittedly, we have not always agreed on specific policy actions or the means to achieve them. Yet, overall, I am quite confident that we have shared a common goal to maximize the benefits which the public receives from America's telecom-

munications infrastructure, facilities and services. I have never doubted this committee's dedication and devotion to the public interest, and I hope and trust that you have not doubted mine.

I also believe that the decisions resulting from the process in which we have been engaged have served, in the end, the American people very well.

Mr. Chairman, I wish you and my successor at this very important agency much success in the ongoing and worthwhile endeavor in the area of telecommunications.

That concludes my opening statement, Mr. Chairman. I will be happy to answer any questions you have. And we have, as I indicated, the bureau chiefs are here to give you as much specificity as you would like.

[The statement and questions and answers follow:]

STATEMENT OF HON. DENNIS R. PATRICK, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you this morning to discuss the Re-Authorization of the Federal Communications Commission for fiscal years 1990 and 1991. With me today are my Office and Bureau Chiefs. They include Alan McKie, Deputy Managing Director; Peter Pitsch, Chief of staff; Diane Killory, General Counsel; Gerald Brock, Chief, Common Carrier Bureau; Alex Felker, Chief, Mass Media Bureau; Ralph Haller, Chief, Private Radio Bureau; Thomas Stanley, Chief Scientist, Office of Engineering and Technology; Richard Smith, Chief, Field Operations Bureau; John Haring, Chief, Office of Plans and Policy; Stevenson Kaminer, Acting Director, Office of Legislative Affairs; Maureen Peratino, Acting Director, Office of Public Affairs; and Marilyn McDermett, Associate Managing Director for Operations.

This will be my last appearance before you as FCC Chairman on a biennial Re-Authorization of the Commission. As you know, I have announced my resignation from the FCC, pending the confirmation of my successor. I therefore would like to take this opportunity to focus your attention on perhaps the most significant challenge my successor will face. That challenge is simply this: how to effectively carry out the FCC's public interest mandate given a growing and rapidly changing telecommunications industry and increasingly austere fiscal constraints.

Two years ago, in April 1987, I first appeared before you as FCC Chairman at our last Re-Authorization hearing. On that occasion I made clear that "my overriding goal, in compliance with the Commission's statutory mandate, [was] to maximize the benefits the public derives from our nation's communication facilities and services." I noted my belief "that consumer welfare and the public interest are what should count in guiding our deliberations." I also noted that "in an age of budgetary stringency, it is essential that the Commission carry out its responsibilities in the most efficient, expeditious manner possible."

Today, two years later, in May 1989 I can report to you that, notwithstanding the fiscal austerity we have faced, we have largely accomplished these goals. Through effective leadership and management, increased use of office automation technology and above all, dedicated and talented staff, we have accomplished much since April 1987. I have attached to my testimony a four-page summary of these accomplishments.

Yet, two years later, I must in frankness also report to you that we have finally reached the point where we can no longer do more with less. In reponse to a question from Senator Stevens in April 1987, I acknowledged that "we are all operating in an era of necessary fiscal restraint and we are trying to be good soldiers in that regard." But now in May 1989, I must admit that the Commission will soon be losing ground in the telecommunications battle unless it gets additional resources.

For in reviewing the current FCC budget situation, it is apparent that we have reached a plateau. We no longer can accommodate telecommunications industry growth and the demands placed upon us by new technologies without an increase in resources for staff, automation, technical equipment, and fixed cost increases. To paraphrase from the song, "Everything's Up to Date in Kansas City", "We've Gone About As Far As We Can Go."

For a number of years the Commission accepted a leaner budget every year. But we are now at the point where the tradeoff between accommodating more budget cuts and assuring that we can fulfill our public interest mandate has been reached or crossed. That is why earlier this year I put out a memorandum to all employees stating that I would not cut any operating accounts any further, that we could no longer cut into the technical equipment, data processing and international conference travel accounts. The choice had finally come down to either furloughing all of our employees or getting more money.

I now would like to summarize for you why we decided to submit our request for a budget supplement for fiscal year 1989 and a budget increase in fiscal year 1990. I'll briefly review the impact of "level funding" on our fiscal year 1989 budget and the $5 million deficit it imposed on the FCC. I'll also note the reduced service and adverse economic implications of our funding dilemma and how if the Congress authorizes and spends more money for the Commission it can actually receive back even *more* money for the Treasury. Finally, I'll describe our fiscal year 1990–1991 authorization request and what else the FCC can do to help raise needed revenues, *e.g.*, the successful FCC fee collection program, and the Administration's competitive bidding proposal.

Impact of level funding for fiscal year 1989

As you know, Congress appropriated $99.6 million for the Commission for fiscal year 1989, the same amount it appropriated for fiscal year 1988. However, because of fixed cost increases such as federally mandated pay raises and health benefit increases, our very personnel-intensive budget began fiscal year 1989 with a $5 million shortfall. In response, we implemented a hiring freeze, requested and received "early out" authority from OPM, and further reduced other operating accounts. Yet we still had a shortfall of $1.4 million. The shortage translated into five no-pay furlough days for all Commission employees. As this drastic action would be very detrimental to the public, we requested a $1.4 million budget suplemental for fiscal year 1989 which was included in the President's fiscal year 1990 budget request.

This deficit has since been reduced to $495,000 due to higher than anticipated savings from employees taking advantage of the early out authority and other personnel savings. But if the Commission does not receive a budget supplemental for the $495,000 shortage, we will have no alternative but to furlough all Commission employees for two days. Of course, we will continue to monitor all accounts and attempt to offset this shortage. However, we do not anticipate any significant additional savings from any of our accounts. We have already reduced them to an absolute, bare minimum.

For example, we have already "zeroed out" all technical equipment and vehicle purchases, reduced our ADP equipment purchases by 75 percent, reduced our travel accounts by 46 percent, supply accounts by 24 percent, library accounts by 39 percent, training by 60 percent, and printing accounts by 14 percent. We eliminated all station changes in the field and we deferred purchase of the "optical image" system for recording our dockets.

Moreover, the substantial fiscal year 1989 shortfall occurred after a long period of steadily declining FCC staff size. For example, in the early 1980's we were authorized and received funding for over 2,000 full-time, permanent employees. In contrast, by this coming October we expect to be down to about 1,620 full-time, permanent employees, a staff reduction of nearly 20 percent.

This staffing shortage has already created a deterioration in our speed of service. Backlogs are increasing in almost every area of the Commission's activities. Complaint resolution is taking longer in almost every activity. In general, as a direct result of the staff shortage, the Commission is becoming less efficient and less responsive, at a time when demands for our services are increasing.

The reduction in other operating accounts is also creating inefficiencies. Here are some examples. Some of our technical equipment is failing. Moreover, we do not have replacements and we cannot buy them. We have terminated some leases for monitoring vehicles, which has increased our response time on interference problems. We have removed some of our telephone lines, making us less accessible to the public. We have *stopped* all new computer systems development which means significant delays in further productivity enhancements. We have placed limits on the number of forms which we provide to the public. We have limited the hours of operation of some public reference rooms, thus reducing services to the public when we should be improving these services. These are just some of the examples of the impact on the Commission and on the public of our budget situation in fiscal year 1989 since October 1, 1988.

In the past during tight budget situations, the Commission has placed a priority on authorization of service and enforcement programs at the expense of rulemaking activities. This year, with the large deficit, we are no longer able to protect these programs from an adverse impact. In addition, our participation in international meetings that are critical to U.S. interests has been limited due to travel and staffing shortages. We also have had to defer further productivity improvements which would require up-front capital expenditures, but would allow us to operate with fewer staff in the future.

Application backlogs are growing and the public is facing increased delays in obtaining licenses for many services. For example, in the public safety area, we expect an additional 10 day delay in granting licenses this year. The processing of 224 FM radio and 15 UHF TV stations will be delayed at least one year. Common Carrier land mobile licenses are currently requiring about 200 days to process which is 60 percent slower than in fiscal year 1988. In addition, some delays in processing rural cellular licenses are expected.

Enforcement efforts are slackening in some service areas. The processing time and backlog will double for handling common carrier informal and formal complaints. Review of radio and TV station EEO efforts and complaints will be up to 50 percent slower. The equipment importation enforcement program will be eliminated, which may increase the amount of interference-producing equipment entering

the U.S. market and place domestic manufacturers who comply with emission standards at a competitive disadvantage. Last year, 326 citations or warnings involving over 7 million pieces of equipment were issued. There also will be up to a 40 percent decrease in the enforcement of other interference-related rules.

Relative to fiscal year 1988, our international travel budget has been reduced 35 percent. While we will maintain adequate representation at major conferences and meetings, a substantial number of important trips have been cancelled. Trips to Canada and Mexico to coordinate satellite and land mobile operations have been postponed. We had to decline a special request from the U.S. Trade Representative to support USTR-led negotiations in the context of the U.S.-European Community Telecommunications Trade negotiations scheduled to take place this month in Brussels. Our reduced attendance at other meetings covering HDTV, AM radio, mobile satellite systems, and various technical matters increases the risk of having positions adopted that are unfavorable to U.S. interests.

Adverse economic implications

The speed and efficiency with which we license new and existing services has a direct impact on the American economy. Delays in licensing caused by staff shortages or lack of automation affect not only applicants, but reduce the GNP and tax revenues.

To illustrate this point, we have submitted to our two appropriations Subcommittees a detailed estimate of foregone Federal Tax revenues as a result of processing delays. We will be pleased to share this analysis with the authorizing Commerce committees as well.

For example, we estimate that the one year reduction of $5 million in our fiscal year 1989 appropriation, if not offset in out years, could reduce the present value of federal tax receipts by roughly $53 million, producing a net revenue loss of approximately $48 million. This is the result of the delays in processing applications in the Mass Media, Common Carrier and Private Radio Services because of the hiring freeze, early-out program and resulting staff shortages. Even if this funding shortfall is offset the following year, $13 million in tax revenues will be lost. On the other hand, we believe it can be demonstrated that if the Congress authorizes and spends more for the Commission's mission and activities, ultimately, the U.S. Treasury will receive back even *more* money in tax revenues.

Fiscal year 1990–91 re-authorization

We believe that our Re-Authorization request of $109,831,000 for fiscal year 1990 and $117,831,000 for fiscal year 1991 will provide us with those minimum resources essential to fulfilling our public interest mandate, without any unnecessary padding. In particular, the proposed $10,218,000 increase for fiscal year 1990, if appropriated, will enable the FCC to meet uncontrollable personnel and other cost increases and restore funds to base accounts that were reallocated in fiscal year 1989 to meet personnel compensation requirements. It will also provide for essential programmatic increases in technical equipment and maintenance and automated data processing compatibility, all of which were deferred in fiscal year 1989 due to budget reductions. Restoration of these essential items in the Commission's fiscal year 1990 budget will be critical to improve FCC productivity and speed of service.

Indeed, the Commission proposes to meet the challenges on an increased workload mainly through improved staff productivity rather than through more staff. And much of this increased productivity will be accomplished through enhanced automation, in fact, 45 percent of the programmatic increases requested in our fiscal year 1990 budget are for computer support and other automatic enhancements such as $300,000 for the procurement and phase one implementation of the advanced optical disc storage system for FCC docket records.

In our draft re-authorization bill, we are also proposing to extend the FCC travel reimbursement program which allows the Commission to accept reimbursement from sponsors of conferences and meetings for necessary expenses incurred by Commission attendees. We are proposing to extend the grant program to enable the Commission to use the experience and abilities of older American citizens and we also seek to extend our authority to relocate the Hawaii monitoring facility.

Finally, we have included in our draft re-authorization legislation a number of non-controversial proposals, the majority of which will modestly increase income for, or reduce cost to, the Government. These proposals include ones to save the Commission up to $300,000 a year in acquisition expenses for state-of-the-art technical equipment, enable the Commission to recover the direct costs of routine audits of common carriers, and authorize the FCC to increase the amounts of various common carrier fines as well as its general and maritime forfeiture penalties. Com-

mission staff have drafted full explanations and justifications for each provision of our proposed authorization act for FY 1990 and 1991.

The Commission and its staff look forward to working closely with you and your staffs in the months ahead on enactment of this important legislation.

Fee collection program and competitive bidding proposal

To conclude on a positive note, I would like to report to you on the Commission's successful fee collection program. Pursuant to statutory mandate, the FCC began to implement this program on April 1, 1987. Since that time, in the past two years, the Commission has collected over $100 million in fees, $58 million alone from rural cellular radio applications. As you know, these fees have been deposited in the U.S. Treasury to help cut the Federal deficit. I might also point out that this $100 million we have helped raise is nearly equivalent to our budget for one year.

In addition, I would like to support the competitive bidding proposals offered by the Administration and NTIA in the 100th Congress and reintroduced as S. 170 in the 101st Congress. This proposal will improve the speed of providing communications services to the public, capture the value of the spectrum for the U.S. Treasury rather than for private licensees, and above all, collect an estimated $3.38 billion which will be a significant dent in the Federal deficit.

Conclusion

Finally, Mr. Chairman and Members of the Subcommittee, I would like to conclude on a more personal note. I would like to thank you for your input and interest in the Commission's affairs over the past two years of my Chairmanship. Admittedly, we haven't always agreed on specific policy objectives or the means to achieve them. Yet, I think in the end, overall, we have shared a common goal to maximize the benefits the public can derive from America's communications facilities and services. I also believe decisions resulting from our mutual interaction have served the American people well. I wish all of you and my successor much success in this ongong and worthwhile endeavor.

This concludes my prepared statement and I would be pleased to answer your questions.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 16, 1989

Honorable Daniel K. Inouye
Chairman, Subcommittee on Communications
Committee on Commerce, Science
& Transportation
SH-722 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am enclosing our response to questions the Commission has received as follow-up to our reauthorization hearing on May 17, 1989, before the Senate Subcommittee on Communications, from yourself, Senators Breaux, Graham and Danforth.

I hope our answers are responsive to the questions. If the Subcommittee needs any additional information to complete the hearing record, please let us know.

Sincerely,

Dennis R. Patrick

Dennis R. Patrick
Chairman

Enclosures

QUESTIONS FROM SENATOR INOUYE

General FCC Functioning

Question: You state in your written testimony that application backlogs are growing and the enforcement process is slackening. What services will be particularly hard hit by the FCC's inability to carry out these functions?

Answer: As you have noted, in the past few months application backlogs have began to grow and the public is facing increased delays in receiving many services. For example, processing of about 224 FM radio and 15 UHF TV station new and major change applications will be delayed at least one year. Not only will this reduce the public benefits of broadcast services, but it will decrease the gross present value of tax revenues by an estimated $44 million. Further, competing FM applications being received now will take about four years to process if they involve a comparative hearing. In early FY 1988, the average time frame was one year to 18 months. This process could be significantly expedited, if the use of lotteries is adopted, as proposed.

In common carrier, land mobile services (paging, two-way) are requiring between 175 and 200 days to process. This is up to 60% slower than in FY 1988. We have recently begun processing rural cellular telephone applications and have granted over 28 construction permits since the first lottery was held in July of 1988. About 804 still need to be granted. We expect the last lottery will be held in December, 1989, and all grants completed by July, 1991, at current staffing levels. Processing for this service has been slowed down some due to staff shortages and the magnitude of filings (185,000 so far this year versus 112,000 for all of last year).

In private radio, we are experiencing processing delays in 12 of 15 services. For example, the average processing time for the special mobile radio service (800 & 900 MHz) has increased 18 days from 22 in early FY 1988 to 40 days. In the public safety services, we are expecting an additional 10 day delay in granting licenses.

Enforcement efforts are also deteriorating. There is a backlog of 300 broadcast (radio and TV) station EEO cases which will take at least three years to complete at current staffing levels. The backlog is expected to grow further. In common carrier, the time to process informal complaints has increased 140% from 55 days in FY 1988 to about 130 days. The backlog has almost tripled to 4,000. Formal complaint average processing time has increased 37% from 65 to 89 days during the same time frame. The backlog is up 50% over last year and is at an all-time high of 259 cases.

The Commission's equipment importation enforcement program has also been curtailed, increasing the amount of interference-producing equipment entering the U.S. market. Domestic manufacturers who comply with emission standards face a competitive disadvantage. Last year, 326 citations or warnings involving over 7 million pieces of equipment were issued and generated about $155,000 in forfeitures. This year no citations have been issued.

Enforcement of marketing rules for video descramblers, CB amplifiers, computer devices, etc., have been curtailed about two-thirds (700 cases). Violations of these rules generate interference complaints and provide an unfair competitive advantage to manufacturers who do not comply. An estimated $600,000 of monetary forfeitures have not been assessed. Other investigations of non-safety interference complaints have also been reduced, such as in the land mobile business service.

Question: How do these budgetary shortfalls affect the country's ability to improve its world-wide competitiveness in communications?

Answer: The Commission's budgetary shortfalls have a direct and deliterious impact on our economy and on our country's ability to improve its world-wide competitiveness in communications. At a time when the demand for the Commission's services are increasing, our lack of resources is making us less efficient and less responsive.

In the common carrier area, budgetary shortfalls are delaying the processing of even rountine licensing applications, tariff filings, and complaints, thus hampering the day-to-day operations of U.S. companies. For example, common carrier land mobile licenses currently are requiring about 200 days to process, which is about 60 percent slower than in FY 1988. Moreover, in order to ensure that routine processing functions are continued, albeit at minimal levels in certain instances, the Commission must shift resources away from other areas. The equipment importation enforcement program will be eliminated, for example, which may increase the amount of interference-producing equipment entering the U.S. marketplace and place domestic manufacturers who comply with emission standards at a competitive disadvantage.

A lack of adequate resources also has other immediate, negative effects. Our international travel budget has been reduced 35 percent relative to FY 1988 and, while we will maintain some representation at major conferences and meetings, a susbstantial number of important meetings have been cancelled. Trips to Canada and Mexico to coordinate satellite and land mobile operations have been postponed. We had to decline a special request from the U.S. Trade Representative to support USTR-led negotiations in the context of the US-European Community Telecommunications Trade Negotiations scheduled to take place in Brussels in May 1989. Our inablility to attend such meetings and conferences increases the risk that positions will be adopted there which are unfavorable to U.S. interests.

The lack of adequate resources also delays or defers indefinitely the Commission's consideration of the many common carrier-related petitions filed with the Commission seeking declaratory rulings or the initiation of rulemaking proceedings. The lack of sufficient resources to devote to such petitions results in regulatory uncertainty in the telecommunications industry, and it is easy to understand how this uncertainty precludes U.S. firms from competing effectively in international markets. Adverse impacts of the budgetary shortfall in terms of international competitiveness can be noted in other areas of the Commission's activities, e.g., with regard to delayed licensing of various radio and TV applications which has an adverse impact on the operating efficiency of U.S. businesses and can deter their ability to compete internationally.

Question: Mr. Chairman, you state that 45% of the programmatic increases requested for fiscal year 1990 would go to purchase computer support and other automatic enhancements. What evidence do you have that increasing automation will save the public money in the long run?

Answer: The long term cost-effectiveness of the Federal Communications Commission's automation activities is well documented in several Commission reports. The Commission is a relatively small organization and has relied on an aggressive automation program over the years to accomplish its mission with a much smaller staff. The Commission plans to continue its efforts for increased use of automation in the future years to maintain the momentum achieved over the past several years to increase productivity at the office place. With the advent of technology gains in the areas of office automation, distributed processing, scientific computation, and telecommunications, the cost effectiveness of the Commission automation program has become more apparent. For example, although the license applications processing workload has doubled in recent years and the level of other essential enforcement and regulatory activities have also seen steady growth, the Commission managed its increased workload with nearly four hundred fewer employees than it had eight years ago, due mainly to our effective utilization of computer technology.

As a result of improved automation capabilities as evidenced in the workload performance charts of the various Commission's activities, we were able to:

- o increase overall productivity in private radio licensing by over 50%.
- o improve speed of service for land mobile applications from 30 to 21 days.
- o increase application disposal rate in all mass media services by 92%.
- o reduce backlogs in AM new and major applications by 40%.
- o authorize new broadcast services such as Terrain Shielding Engineering and FM/TV boosters.
- o directly support other vital activities of national and international scope such as the United States delegations for International Conferences generally held in Geneva, Switzerland.

The Commission is sensitive to its responsibility to the taxpayer to provide only necessary services efficiently, and at the least possible cost. Therefore, the Commission plans to continue to focus on the use of automation as a tool to maintain productivity, reduce application backlogs and accommodate projected workload growth without substantial personnel increases.

Question: I understand that part of the requested increase in the FCC's budget for fiscal year 1991 is to pay the costs of consolidating the Commission into one building. Why is consolidation necessary?

Answer: In 1986, GSA identified the FCC as a potential candidate for consolidation. GSA believes that consolidation of the FCC Headquarters in one facility will be more cost effective over the long term because less space will be leased and because they plan to negotiate a 20 year lease.

In June 1987, the FCC was notified that OMB had approved the draft prospectus and in September 1987, the House Public Works Committee approved the prospectus. The prospectus includes approximately 260,000 square feet of space, a reduction of 34,000 square feet from the current leases.

There are a number of real but intangible benefits associated with consolidation. Some of these benefits are: improved management of Bureaus/Offices by co-location in one facility rather than two or three locations; easier coordination between Bureaus/Offices because all staff will be in one location; less time spent walking between multiple buildings to conduct briefings, deliver mail, visit the library and other support offices; and an improved telecommunications/data distribution system which should lower costs for future modifications. Also, the current locations are reaching maximum utilization of conduits, etc. and further enhancements may be limited by current building configurations and ADP distribution capacity. Finally, the Commission will be able to serve the public better through the consolidation of reference rooms and other public services.

However, in spite of other benefits to the Commission, the controlling consideration is the opportunity to reduce the cost of office space rental. GSA indicates that a consolidation will, in fact, save money. (See response below).

Question: It is intended to save money in the long run?

Answer: Yes. The General Services Administration believes the relocation of the FCC to a consolidated facility will save money in the long run. The proposed lease period is for twenty years. GSA believes the cost savings to the government over this period will be $28 million. This figure is based on GSA's estimate of present value cost savings of $8 million, favoring a consolidated facility over leased space in multiple locations, plus a $20 million savings in rent resulting from a reduction of 34,000 square feet of leased space when the Commission is relocated to a consolidated facility.

GSA also forecasts additional savings will be generated by lower building maintenance costs, more efficient use of energy resources and lower administrative/overhead expenses. We also anticipate savings in the outyears because the proposed building will include features which reduce operating and maintenance costs, as well as the expenses associated with relocating employees within the building.

Hawaii Monitoring Station

Question: The FCC authorization bill passed by the last Congress contained language authorizing the re-location of the Hawaii Monitoring Station. What steps has the Commission taken to implement this language? Has the FCC taken steps to have this land appraised? If not, when will such an appraisal take place?

Answer: The Commission had been proceeding on several fronts to implement the language in the authorization bill.

First, we have surveyed potential sites on Oahu to determine their technical suitability vis-a-vis terrain, public/staff access, and radio interference environment. A general study of Oahu has to date revealed 12 sites worthy of further consideration. Of these, as many as four sites in the central "saddle" area of the island might prove technically suitable for a consolidated relocated facility, and two sites in the north shore area might provide technically suitable for relocation of the long-range direction finder and receiving antennas under a remote control scenario. However, before any acquisition actions are undertaken, the availability and affordability of the properties must be assessed, and more detailed technical feasibility studies must be done.

Second, we have been in contact with the appropriate GSA officials to obtain appraisals of the existing property and to work out the procedural details for disposing of the facility. The GSA has provided an informal interim appraisal of $6,000,000 worth for the existing property at its "highest and best use" which has been deemed light industrial. However, the land is presently zoned for agricultural use, and the expressions of interest for development of the property to date have been for residential use. The GSA normally does not conduct a formal appraisal until after a property has been declared excess, but we are asking them in this circumstance to formally appraise the value of the land under the various zoning options. We have investigated the rezoning procedures with local authorities in an attempt to maximize the return to the Government on the sale of the property. Any rezoning initiated by the Commission to permit residential or light industrial use would normally take about a year with concurrent State and City processes.

Question: When does the FCC believe that this re-location will be completed?

Answer: The design and construction of and move to a new facility could be completed within three years once a new site has been acquired. It is very doubtful, however, that proceeds from the sale of our present property would yield an amount sufficient to fund the entire cost of the relocation without first rezoning the property. Therefore, the rezoning process must be successfully completed and the sale consummated before any new site acquisition can be initiated. For this reason, we believe that the entire process will take four to five years.

Question: Does the Commission need additional assistance from the Congress to carry through with this program?

Answer: If sufficient proceeds cannot be realized from the sale of the existing property to fund the acquisition of a technically feasible site, together with construction and relocation expenses, then the relocation cannot take place without additional funding from Congress. Also, if further study shows that a multi-site configuration (with rented office space in Honolulu and remotely controlled direction finder and monitoring antennas at a remote FCC-owned site) is more cost effective, then the Commission will need Congressional assistance to fund the recurring costs of this scenario. Depending upon the siting and communications method, the recurring costs for space rental and wideband communications are estimated to be between $100,000 and $200,000 per year. Funding for these recurring costs is not in the Commission's existing budget base.

Common Carrier

Alternative Operator Services

Question: I have received many complaints that new operator services companies are charging hotel and pay phone customers rates that are up to three times as much as the rates charged by AT&T. The FCC recently required these new companies to provide callers with greater information and to allow customers to choose another long distance company to carry their calls. But the FCC refused to regulate the rates charged by these firms. Why does the Commission refuse to regulate these new companies' rates?

Answer: The Common Carrier Bureau (Bureau), acting on delegated authority, is working to ensure that the rates charged by alternative operator services (AOS) companies are just and reasonable. The Bureau's actions include taking steps to promote informed consumer decision-making. They also include a determination by the Bureau that practices such as "call blocking" -- practices that restrict consumer choice -- are unlawful under the Communications Act and must be eliminated. The combination of these actions will serve as a strong deterrent against the unreasonably high rates referred to in your question, and are designed to achieve the same result as direct regulation of AOS companies' rates and practices -- compliance with the Communications Act's requirement that rates be just, reasonable, and not unreasonably discriminatory.

When the FCC first began receiving complaints about operator service providers in late 1987 and early 1988, we found that a number of these companies were charging rates as much as three times the rates charged by AT&T. In March 1988, the Common Carrier Bureau initiated a proceeding to determine whether alternative operator service providers were operating in compliance with the Communications Act. A consumer bulletin was issued in order to inform consumers about operator service providers. Shortly thereafter, operator service provider rates started to drop and have continued to decline significantly. Moreover, the operation of competitive market forces has resulted in a significant decline in operator service provider rates over the past year.

In response to complaints filed by several parties, including the Telecommunications Research and Action Center (TRAC), the Bureau issued an order concerning AOS companies' rates and practices. This order did not address specific AOS company's rate levels partly because there was insufficient information in the record to support a finding that the rates of the particular companies involved in the proceeding were not cost justified and therefore unlawful. The Bureau, however, did determine that much of the basis of consumer concerns about service providers was their practices involving lack of notice and call blocking that restricted a customer's ability to reach his or her carrier of choice or some other long distance carrier. As these restrictive practices are eliminated and sufficient

information and competitive options are made available to consumers, the rates for basic services should drop further or operator service providers will lose business because consumers will refuse to use them.

Question: You point out that consumers may file complaints against these companies with the FCC to obtain refunds of overcharges. Isn't it bad policy, however, to place the burden of ensuring reasonable rates on each individual member of the public? Why doesn't the FCC take stronger action to protect the consumer against excessive rates before the fact?

Answer: The Bureau's order in the complaint proceeding discussed above, which commonly is known as the TRAC proceeding, was not intended to place, and does not place, upon individual members of the public the regulatory burden of ensuring that AOS providers charge just and reasonable rates. The Bureau's actions are designed to assure that sufficient information and options will be made available to consumers in order to facilitate informed decision making. Any carrier failing to implement the requirements set forth in the Bureau's Order will be subject to forfeiture penalties, complaints for damages, and other sanctions provided under the Communications Act. We are confident that with consumer notification and the elimination of call blocking in place on an industry-wide basis, consumers will decide for themselves the services they want as well as the rates they are willing to pay. The Commission will continue to closely monitor the practices of operator service providers. To the extent the remedies adopted by the Bureau need to be supplemented or individual cases of noncompliance are brought to our attention, we will take such remedial actions as may be necessary to protect the public interest.

Question: It is difficult to understand what benefit the consumer gets from competition in the alternative operator services market when rates for such services are going up, not down. Specifically, what benefits to the consumer do you believe will emerge from the introduction of competition into the operator services market? Do you believe that these benefits are worth the trouble?

Answer: The information we have regarding AOS companies indicates that rates in this industry have not gone up but have declined over the past year, in many instances significantly. Moreover, it is our preliminary assessment that AOS companies often are sources of new, innovative services for the public, such as bilingual operators and voice messaging services. There is evidence that AT&T and some Bell Operating Companies have moved to diversify their operator services in response to this competition. Thus, it would appear that competition in the operator services market is generating consumer benefits. In this light, it would appear prudent for the Commission to rely on competition where information and choice are available.

FCC's Tariff Procedures

Question: Last year, I offered an amendment to the FCC Authorization bill which placed deadlines on the FCC's tariff investigations and complaints. I offered this amendment because it was clear to me that the Commission's tariff investigations were taking too long to complete and were effectively denying interested parties the right to judicial review. This amendment was adopted unanimously by both the Senate and the House, and was signed into law by the President. Has the Commission complied with the terms of that amendment to date?

Answer: Yes. The Common Carrier Bureau (Bureau) has devoted substantial staff resources to ensuring compliance with the deadlines established in the Federal Communications Commission Authorization Act of 1988 (FCAA) for completing tariff investigations and resolving complaints.

Indeed, the Bureau's Tariff Division has established a number of special procedures for the exclusive purpose of ensuring compliance with the FCCA requirements. For example, synopses of the status of pending investigations have been prepared, and are frequently updated, detailed scheduling targets have been established, and a senior attorney has been assigned responsibility to assist in the monitoring of progress with regard to the investigations.

The Bureau's Enforcement Division also is moving expeditiously to resolve all complaints within the time frame mandated by the FCAA.

Question: Does the Commission intend to comply with that amendment in the future?

Answer: Yes.

Question: When does the Commission plan on finishing those investigations that have been pending for several years?

Answer: Under the new statute, such investigations must be completed not later than November 2, 1989. The Commission intends to comply with the terms of the statute.

Frequency Allocations for Aeronautical Services

Question: A short time ago, the Commission decided that aviation safety traffic would share certain aeronautical frequencies with commercial mobile satellite services. The Commission took this action despite the concerns of the FAA and the National Transportation Safety Board (NTSB) that such sharing would jeopardize aviation safety and would conflict with the allocation decision of the 1987 World Administrative Radio Conference (WARC). Does the

FCC's proposal for shared use of these frequencies conflict with the results of the 1987 WARC?

Answer: The U.S. domestic approach to allocation of the L-band protects aeronautical safety communications from harmful interference to a greater extent than the international allocation adopted by the 1987 Mobile WARC. The U.S. allocation clearly recognizes the rights of aeronautical safety communications over any non-safety traffic, including aeronautical commercial traffic, across the whole 28 MHz of L-band spectrum.

The 1987 Mobile WARC adopted an international allocation for L-band frequencies that divides the spectrum into separate blocks for land, aeronautical and maritime mobile satellite services. However, under the international allocations, administrations can decide to allow a mix of traffic on the L-band frequencies. Under the international allocation, 20 MHz is set aside for aeronautical use, and an administration can allow both safety and non-safety aeronautical communication traffic on that spectrum. Eight MHz of previously allocated aeronautical spectrum is set aside for land mobile services, and administrations may authorize aircraft and ships to communicate with mobile satellites assigned to use that 8 MHz of spectrum.

The U.S. domestic allocation for L-band represents a dynamic, rather than a block, approach for the same 28 MHz of spectrum. By recognizing that both aeronautical and other mobile services can have access to the 28 MHz of spectrum, the actual assignment of spectrum for each service within the band can be based on actual demand for each service. Nonetheless, the U.S. domestic allocation does set aside 10 MHz of spectrum on a primary basis for only aeronautical safety communications, with other mobile satellite services provided on a secondary basis. Further, aeronautical safety communications are allowed priority and real-time preemptive access to the remaining 18 MHz on an as needed basis. Thus, other mobile traffic, including aeronautical commercial traffic, is required to vacate spectrum to assure that aeronautical safety communication requirements are met, as needed.

Question: **Has the FCC done any testing to ensure that commercial mobile satellite traffic will not interfere with aviation safety needs?**

Answer: Detailed testing cannot be done until technical requirements for aeronautical safety communications are identified and a mobile satellite system is implemented. The aviation community is still in the process of developing technical requirements and satellite system specifications for aeronautical communications. However, under the Commission's recent decisions, any mobile satellite system operating on the 28 MHz of L-band spectrum must be designed to satisfy the U.S. allocation requirements: priority and real-time preemptive access for aeronautical safety communications.

Cable-Telco Cross-Ownership

Question: The Commission recently affirmed the Common Carrier Bureau's waiver of the cable-telco cross-ownership restriction to allow GTE to participate in a cable system in Cerritos, California. The Commission's decision, however, appears to be based on different reasoning than that used by the Bureau in granting the waiver. Why did the Commission's reasoning differ?

Answer: The cross-ownership ban in the Cable Act and the Commission's rules prohibits a telephone company from providing "video programming" to subscribers, either directly or indirectly through an affiliate, within its telephone service area. See 47 U.S.C. § 533 and 47 C.F.R. § 63.54. Any relationship other than the carrier-user relationship is prohibited by the Commission's rules. See 47 C.F.R. § 63.54, note 1. The Cable Act and the Commission's rules permit the Commission to waive the cross-ownership prohibition: (1) if video programming demonstrably could not otherwise exist; or (2) upon other showing of good cause.

GTE filed a Section 214 application to construct and operate a cable facility in Cerritos. Half of the facility would be leased by Apollo, the cable television franchisee in Cerritos, to provide video programming to the city of Cerritos. The other half would be leased to an affiliate of GTE for conducting various tests of broadband services, such as "near" video-on-demand service. The Common Carrier Bureau found that the relationship between GTE and Apollo constituted a prohibited affiliation, but issued a waiver because it concluded that, absent GTE's involvement, video programming provided directly to subscribers by means of a cable system in Cerritos could not otherwise exist.

Subsequent to the Bureau's decision, GTE filed another Section 214 application, to install a fiber optic cable in Cerritos in order to conduct technical and marketing tests of voice, data, and video transport, as well as "pure" video-on-demand service. GTE stated that the installation of both coaxial and fiber optic cables in Cerritos would enable it to perform marketing and technical tests of these services, and to evaluate technologies that hold the promise of offering future integrated voice, data, and video services. GTE contended that the comparative tests constitute a unique opportunity to develop multivariable assessments of the relative merits of such delivery modes as near and pure video-on-demand.

The Commission on review found that the potential importance and value of the coaxial, fiber, and comparative tests warrant a waiver of the cross-ownership rules for good cause. The Commission restricted the waiver to five years and required GTE to contract for video programming. The Commission also applied separate accounting requirements and prohibited GTE from assigning any costs of the cable systems to telephone ratepayers.

Question: Specifically, what new technologies will GTE provide as a result of its participation in this cable system that are not being made available in other cable systems?

Answer: The Cerritos experiment will offer a simultaneous comparison of near video-on-demand and pure video-on-demand services. It will provide two single mode fibers per customer, obtained from different manufacturers, that will test, individually and comparatively, broadband and narrowband technologies, network architectures and operations, administration and maintenance requirements. Five technology tests and four service experiments will be conducted in the initial stage of the test, as well as experiments with new technology, e.g., enhanced quality television transmission, video-on-demand, network-based multiscreen capability and multiplexing techniques. The Cerritos trial will test various video system designs. Also, the fiber optic switching and multiplex equipment will have the ability to test both analog and digital transmission techniques. The electronic equipment included in the fiber optic tests is highly experimental, and custom developed for this application. We are unaware of another cable system that provides this range of tests.

Question: What kind of showing does the Commission propose that a telephone company make before the Commission will grant a waiver? For instance, will the Commission conduct its own factual investigation to determine whether the proposed cable system will employ new technology, or will the Commission accept a telephone company's self-certification that new technology will be employed, or will some other standard be used?

Answer: Section 613(b)(4) of the Cable Act, 47 U.S. C. § 533(b)(4), envisions that waivers of the cross-ownership restrictions will be based on assessment of the "particularized circumstances demonstrated by the petitioner". 47 U.S.C. § 533(b)(4). This statutory standard mandates that the Commission consider each application for waiver individually. For that reason the Commission has not attempted to identify beforehand every circumstance that might justify a waiver. However, the Commission has issued policy statements to the effect that construction of advanced integrated telecommunications systems, i.e., those capable of providing both video and traditional telephone services, could justify a waiver of the telephone company/cable cross-ownership restrictions. In Revision of the Processing Policies for Waivers of the Telephone Company-Cable Television Cross-Ownership Rules, CC Docket 78-219, 69 FCC 2d 1097 (1978), the Commission indicated that advanced integrated systems might justify a waiver. More recently, in its on-going telephone/cable cross-ownership inquiry, Telephone Company/Cable Television Cross-Ownership Restrictions, CC Docket No. 87-266, 3 FCC Rcd 5849 (1988), the Commission tentatively concluded that good cause for a waiver could be shown where a telephone company proposes to provide video programming over an integrated telecommunications system which was switched, capable of delivering several video signals into the home simultaneously, capable of being interconnected with independent cable operators, and operated pursuant to

safeguards to prevent anticompetitive conduct. The Commission has not issued a final decision in CC Docket 87-266.

In granting an application for waiver of the telephone company/cable television cross-ownership restrictions, or any other type of application for that matter, the Commission ordinarily will assess the representations of the applicant aided by the analysis of commenting parties. In an application for waiver relying on experimental or advanced technology, the Commission would decide whether the proposed technology along with other factors presented in the application warrant a waiver. If necessary, the Commission can condition a grant on use of certain technologies and can impose reporting requirements for follow-up assessments. In the Cerritos case, for example, the Commission limited the grant to five years, and required periodic reports.

Miscellaneous

Question: My office has received a number of complaints about computerized telephone calls. The object of these complaints range from automatic dialers that call the same telephone numbers repeatedly, to computerized messages that fail to disengage the line after the called party hangs up, to so-called "junk fax" deliveries that not only tie up the line but also add costs to the receiving party. What is the Commission doing to prevent these computerized devices from annoying the public and tying up telephone lines?

Answer: I recently provided Representative Edward Markey with a description and explanation of the Commission's policy concerning telephone solicitation, as well as an analysis of various legislative initiatives in this area currently pending before Chairman Markey's Subcommittee on Telecommunications and Finance. In response to your question, I am enclosing for your review a copy of my letter to Chairman Markey.

Question: There is increasing concern among some consumers and privacy groups that the new customer calling features being installed by the carriers will allow the called party to identify the location of the calling party without that party's permission. Is the Commission planning to investigate ways of safeguarding the privacy of the telephone customers that originate telephone calls?

Answer: The Commission has not had occasion to investigate or otherwise consider the kind of privacy issues raised in your question. For the most part, this is due to the fact that such issues usually arise in connection with the provision of services that are tariffed at the state level, such as the custom calling services mentioned in your question.

Question: Last year, the Congress passed legislation requiring the FCC to finish a rulemaking proceeding regarding the provision of telecommunications services to the deaf. When is the FCC planning to issue its report on this proceeding?

Answer: Section 5 of Public Law 100-542 states that the Commission "shall, within 9 months after the date of enactment of this Act, complete its existing inquiry regarding an interstate relay system for users of TDD's." It is our expectation that our Further Notice of Inquiry proceeding will be finished and released by July 27, 1989.

Question: Last month, on April 18, I wrote to you, Mr. Chairman, asking you to investigate the alleged anti-competitive practices committee by US West against the Gila River Indian Community. I have not yet received a response to that letter. Are you proceeding with that investigation? When can I expect the investigation to be finished? If not, why not?

Answer: Gila River Telecommunications is a party to a contested proceeding involving mutually exclusive applications for a license to provide cellular telephone service in a rural service area. Pursuant to the Commission's rules, this proceeding is a "restricted adjudicative proceeding" and will remain so until it is no longer subject to Commission or court review or reconsideration, and the Commission's ex parte rules prevent me from discussing any of the substantive issues involved at this time. See 47 C.F.R. §§ 1.1202, 1.1208. The Commission's rules do not prevent me from providing you information about the status of this proceeding, however, and I welcome the opportunity to provide you the following:

Gila River Application

RSA Market:	Arizona 5
No:	322
Frequency Block:	B (wireline)

Procedural History

Application filed:	07/27-29/88
Lottery held:	11/09/88
Amendments and hard copy of application filed:	11/17/88
Financial qualifications demonstration filed:	02/27/89
Supplement to demonstration of financial qualifications filed:	03/01/89
Petition to Deny filed by US West/New Vector Group:	03/13/89
Petition to Deny filed by Aztel:	03/14/89
Gila River Opposition to Petition(s) to Deny filed:	04/12/89
Motion to Accept and Comments of the National Telephone Cooperative Association filed:	04/12/89
Gila River Supplement to Opposition to Petition(s) to Deny filed:	04/14/89
Gila River Eratum to Supplement to Opposition to Petition(s)	

to Deny filed: 04/17/89
US West/New Vector Group Reply to Opposition filed: 05/04/89

Please be assurred that you will be provided a copy of the Commission's decision in this proceeding as soon as it is released.

QUESTIONS FROM SENATOR DANFORTH

Question: What should the FCC's role be in high definition television?

Answer: In my view, the Commission plays a pivotal role in the establishment of the next generation of television. Under the Communications Act, the FCC has two crucial responsibilities: to make decisions concerning spectrum use and to make standards decisions. Moreover, Section 303(g) of the Act also directs the Commission to "study new uses for radio ... and generally encourage the larger and more effective use of radio in the public interest." This suggests that the Commission should examine the public interest ramifications of authorizing terrestrial broadcasters to deliver advanced television service and establish the rules and policies to govern this service. In this regard, decisions on the important matters of ATV spectrum capacity and transmission standards will be made by the Commission. The Commission has already actively assumed the role described above by opening MM Docket No. 87-268 in which it is examining all the legal, technical and policy issues posed by the development of advanced television systems. It has also established the Advisory Committee on Advanced Television Service that will provide recommendations on all these issues based upon information generated through a rigorous testing program.

Question: We have received a number of complaints lately about spectrum interference. Isn't the FCC's main task to act as a traffic cop for the spectrum?

Answer: The Commission places high importance on compliance with our rules concerning interference. It should be noted, however, that some possibility of increased interference is tolerated in order to allow the creation of additional service.

Indeed, one of the Commission's primary and most challenging duties is to assign and enforce interference rights and responsibilities between the various radio services and among individual stations within those services. Generally speaking, the Commission has always utilized interference crtieria in which some marginal amount of interference to far fringe reception is accepted in exchange for the assignment of local outlets. Hence, while we have policies and rules to limit the displacement effects as much as possible, interference to some viewers or listeners is always a possibile consequence of the licensing of a new station.

Moreover, of necessity, our interference criteria are based on a number of assumptions including audience preferences, equipment performance and signal propagation. Where actual conditions do not match our assumptions, the regions of coverage and interference may differ from what was predicted. In an effort to better account for actual conditions, it has been suggested that licensees be given some discretion to coordinate modifications of their

interference rights, subject to review by the Commission. This concept is now being studied in a few Commission proceedings.

Unfortunately, our ability to enforce our interference rules has been somewhat impaired as a result of recent budgetary restrictions that have led to a decline in available equipment and staffing at our field offices. We are optimistic that this trend will not continue.

Question: Under the Cable Act, cable rates are deregulated where there is "effective competition". Are you satisfied with the FCC's definition of "effective competition"?

Answer: The Commission established a definition of "effective competition" based on the record in our proceeding implementing the Cable Act. Therein, we determined that the existence of three or more over-the-air broadcast signals in a cable community, received free of direct charge, provided viewers with adequate programming choices to present an effective constraint on the market power of a cable system in the provision of its basic service offering. Further, we believed that our definition of "effective competition" was consistent with the procompetitive goals of the Cable Act and would permit the regulation of cable rates in markets where consumers do not have alternatives to basic cable service such that competitive market forces would not be sufficient to ensure reasonable cable rates.

The deregulation of basic cable service rates based on this definition became effective on December 29, 1986. As required by the Cable Act, we will report to Congress by October 1990 concerning these and other matters relating to the deregulation of basic cable service rates. Work on this report has already begun.

Question: The FCC has proposed to grant an across-the-board power increase to Class A FM radio stations. Can the FCC reasonably state that such an across-the-board increase would not cause interference to other radio stations?

Answer: The Commission has sought comment on two general approaches to authorizing higher power for Class A FM stations. Under one approach, new interference criteria would be developed to ensure that no increase in predicted interference would result from the power increase. We believe that roughly 1400 Class A stations could be eligible for a power increase under this approach.

The other approach would permit all Class A stations which meet current interference criteria to increase power to 6 kW. (So-called "short spaced" stations would be treated differently.) Perhaps as many as 300 or 400 additional stations would be eligible under this plan. However, this scheme would cause some interference to some larger stations. Nevertheless, the scheme seemed worthy of consideration because the interference effects

appear to be relatively small. (It is estimated that only 2% of these stations' coverage areas would be affected.)

While no final decision has been rendered on this matter, the Commission is proceeding very cautiously. The staff is now studying other options which would prevent any increase in interference to existing stations while still affording most Class A stations a power increase.

Question: As a result of the FCC's accommodations to similar pleas by AM stations, the AM radio band has suffered significant degradation. Won't accommodation to these pleas by the Class A FM stations begin a pattern of degradation of the FM band similar to the AM band?

Answer: In recent years, the Commission has allowed daytime AM stations additional operating hours pre-sunrise and post-sunset. Some AM stations are now allowed to operate all night. But in these cases, the authorized transmitter power was chosen so as to protect other stations. Limited operation has also been permitted on some of the frequencies formerly reserved for "clear channel" operation, provided the clear channel stations were fully protected from interference.

Decline in the quality of the AM service is a complex matter which is attributable to many factors including: degradation of AM facilities, particularly ground systems; excessive signal processing; poor receivers; a slow but steady increase in the number of nighttime signals causing a perceptible increase in interference; and rising audience expectations of quality created by the introduction of higher quality alternative media (e.g., FM broadcast, compact discs). We have a variety of proceedings underway right now looking to correct as many of these factors as possible so as to put AM service on a more equal footing with other aural entertainment media.

But AM licensees are not the only ones experiencing problems. Class A FM licensees argue that expanding suburban communities and commuting patterns render their service areas inadequate. Increasingly, they must compete with larger stations for the same audience. Thus, they have requested a modest power increase to help them serve their audiences better. As I indicated above, we will proceed very cautiously on this matter in order to avoid even minimal new interference to Class B stations. The staff is also studying the possibility of a new FM proceeding that would correct various errors in the FM spacing table and recommended other technical changes that in our opinion would improve the technical quality of the FM service. Thus, we do not envision any "pattern of degradation" taking place in the FM band.

Mass Media

Lottery Proposal

Question: In your proposal to replace the comparative process for selecting new broadcast licensees with a lottery, the Commission is considering eliminating the preference for females. Elimination of the female preference would directly contradict the language in last year's appropriations bill. Could you explain how the Commission believes that the lottery proposal will satisfy this legislative mandate?

Answer: The Commission has invited comment on this issue in the lottery Notice. In the notice, we stated that we do not interpret the restrictions Congress inserted into the FCC's appropriations for FY 1988 and FY 1989 that prohibit the Commission from spending funds to repeal, retroactively restrict, or continue a reexamination of current rules and policies to promote ownership of broadcast licenses by minorities and women, as being applicable to the Commission's lottery proposal. That legislation is expressly directed at changes in the comparative licensing process, and neither the express words of the statute nor the legislative history accompanying it suggests Congress' intent to apply this restriction to lottery procedures under Section 309(i) or to limit the Commission's discretion under Section 309(i) to determine when a random selection process would serve the public interest.

We also pointed out in the Notice that, consistent with our earlier determination, inclusion of a preference for women under either the "media ownership" or "minority ownership" preferences provided under Section 309(i) would not be statutorily permissible and that this interpretation had been judicially affirmed. Women's Preference Order, 50 Fed. Reg. 36056 (Sept. 5, 1985), Pappas v. FCC, 807 F.2d 1019, 1024 (D.C. Cir. 1986). Again, there is nothing in the appropriations language that suggests Congress meant to override the Commission's and the court's interpretrations on this matter. Nevertheless, consistent with dictum provided in the Pappas case, we have invited comment on whether it is possible to create additional preferences for women or others without diluting the minority or diversification preferences provided under the statute and whether these possible preferences (or any others) would serve the public interest. We emphasized, however, that if we ultimately were to decide to retain the comparative process in its existing form, we would, of course, be required, consistent with the appropriations language, to leave intact the minority and women preferences.

Question: Why didn't the Commission request comments on proposals other than a lottery to improve the comparative hearing process?

Answer: In electing to examine lotteries, the Commission found serious public interest problems with the hearing process itself. These problems could not be addressed by merely refining the existing process. Hence, comments were not sought on proposals to improve the comparative hearing process.

Nevertheless, the Commission has been open, through other rule making proceedings, to suggestions and ways to improve its broadcast licensing processes. For example, very recently, the Commission amended the construction permit application form (FCC Form 301), used by applicants in the comparative new hearing process, to prevent filings by insincere or non bona fide applicants. These changes now require greater disclosure of information about financial qualifications, the identity of all equity owners of applicants (whether such interests are attributable or nonattributable under our multiple ownership rules), and earlier disclosure of information pertaining to the important comparative factor known as integration of ownership and management. Thus, participants in the comparative hearing process will be in a better position to test the qualifications of competing applicants and, in turn, opportunities for abuse that exist in the process will be reduced. The Commission will of course continue to remain open to suggestions to improve its policies and processes.

Question: **Didn't the Federal Communications Bar Association request that you institute a proceeding to revise and improve the process? What is the status of that request?**

Answer: An ad hoc committee of the Federal Communications Bar Association ("FCBA") did file a request seeking revision of the construction permit application form (FCC Form 301), in order to deter abuses of our licensing process. In response to that request, we initiated a rule making proceeding that led to various changes in the construction permit application form which are described in the answer to the preceding question. In addition, we note that the FCBA has indicated, in its motion for extension of time to file comments in the lottery proceeding, that it views the Commission's lottery proposal "as necessarily involving a review of the purposes of the traditional comparative hearing process, the problems with the present process, and ways to improve that process." As a result, the FCBA states that it intends to address in its comments in that proceeding the benefits of the comparative hearing process as reformed and improved against the benefits of a lottery scheme as proposed by the Commission. Because we extended the time for filing comments and replies in the lottery proceeding to June 8, 1989, and June 30, 1989, respectively, we just recently received FCBA's comments. We will, of course, carefully review its submission, along with the other submissions in the proceeding, before any final action is taken.

HDTV

Question: **Mr. Patrick, does the Commission intend to adopt a standard for HDTV production and transmission?**

Answer: The Commission intends to adopt terrestrial broadcast transmission standards for advanced television service. We anticipate adoption of such standards will follow recommendations from the Commission's Advisory Committee for Advanced Television Service. While we intend to set standards even if

the Committee fails to reach agreement on appropriate standards, the first two reports of the Committee give us confidence that its deliberations will produce a recommendation, developed through industry consensus, defining standards that strike an optimal balance among the many potentially conflicting objectives that such standards must satisfy. The Committee is currently completing preparation to begin testing and evaluating several different proposed advanced television systems in early 1990. Because it lies beyond the direct scope of the Commission's responsibilities, the Commission is not considering adopting a production standard for HDTV.

Question: **Could you share with us your views on how long it will take the FCC to settle on an HDTV transmission standard?**

Answer: In its Second Interim Report, the Commission's Advisory Committee for Advanced Television Service indicates that it can complete the necessary preliminary testing and evaluation of candidate transmission systems and present a standards recommendation to the Commission by November 1991. If this schedule can be met, I believe that the Commission would be able to adopt HDTV transmission standards by the end of 1992.

UHF/VHF Swaps

Question: **Does the Commission believe that the public interest would be served by permitting a non-commercial VHF licensee to swap channels with a commercial UHF licensee?**

Answer: With respect to interband channel exchanges (VHF for UHF), the Commission has no basis, independent of statements of policy by the Congress, for forming a belief as to whether such exchanges might serve the public interest. Consistent with Congress' wishes, the Commission has taken no actions which might lead to a reduction in the number of VHF channels reserved for non-commercial educational stations. Were the Commission called upon to independently determine whether the public interest would be served by the exchange of a non-commercial VHF channel for a commercial UHF channel, in order to ensure that its determination was based on a complete factual record, it would do so only after notice and an opportunity for comment.

Antitrafficking Rule

Question: **On February 10, 1989, your Commission dismissed a petition that sought to commence a rulemaking on the three year anti-trafficking rule. Why did the Commission ignore the arguments raised in the Petition for Rulemaking? In dismissing the petition, did the Commission consider the evidence presented to the Congress that supported a reimposition of the anti-trafficking rule?**

Answer: The Commission has considered the question of the public interest utility of anti-trafficking rules on several different occasions in the past

few years. In its Report and Order in BC Docket No. 81-897, 52 RR 2d 1081, based on the considerable changes that had occurred in the broadcast industry, including the present maturity of the industry and the multiplicity of outlets available, the Commission determined that the the "three year rule" and its underlying policies were no longer needed. It concluded that, in the vastly competitive environment that existed, the public interest in general would be best served by allowing station sales transactions to be regulated by marketplace forces, and that the purchase and resale of broadcast properties in less than three years should not be deemed per se contrary to the public interest. The Commission explained that a primary incentive of any purchaser of a broadcast station is to increase the station's value and that this is best accomplished by improving the station's operations and services (including programming), thus benefitting the public. It reasoned that in determining what programming to air in order to best serve the public interest, broadcasters will be primarily guided by market forces regardless of the length of time the station is held. Nevertheless, to ensure that its licensing process was not undermined, the Commission adopted a one-year holding period for licensees who obtain construction permits as a result of a grant through the comparative hearing process. In 1985, in response to petitions for reconsideration including one filed by the very same petitioners referenced in your question, the Commission reaffirmed its decision to delete the three-year rule in Memorandum Opinion and Order, 99 FCC 2d 971 (1985).

Since then, we have denied an application for review of a staff action dismissing a petition for rule making looking toward reimposition of an anti-trafficking rule. Memorandum Opinion and Order, FCC 88-398 (released February 10, 1989). In denying the request, we found that the issues raised by the petitioner merely restated arguments previously considered by the Commission in its original decision and reconsideration. Among these arguments was that eliminating the holding period and permitting the sale of stations for the highest value is counter to the public interest; that the present policy has lead to instability in the broadcast industry and a concomitant reduction in public service programming; and that, as a result, the presentation of public affairs and children's age-specific programming has suffered. Even though we found the issues raised by petitioner repetitive, we discussed them in order to provide a clear understanding of the subject. In this regard, we concluded that elimination of the three year rule fostered rather than impeded the public interest. A primary incentive of any purchaser of a broadcast station is to increase the station's value which is accomplished by improving the station's services and operations, thus, benefitting the public. When addressing the tastes and needs of the consumer, broadcasters will act efficiently, irrespective of the length of time they hold a station, and will be guided primarily by the marketplace when determining what programming to air. We could discern no direct nexus between anti-trafficking rules and the nature of programming. To the extent that there is a perceived need for additional community responsive programming and children's broadcasts, we stated that anti-trafficking rules would be an ineffective way of satisfying this need. In reaching our determination, we considered and reviewed all relevant and material information that had been presented to us in that

proceeding, including information that had been presented to Congress, but, nevertheless, concluded that such evidence was insufficient to justify reimposition of antitrafficking restrictions. Consistent with our earlier actions, we concluded therefore that sufficiently compelling reasons had not been established to warrant our revisiting this matter.

Indecency Complaints

Question: In view of the pendency of the court proceedings concerning the FCC's indecency rules and regulations, what is the standard broadcasters are held to today?

Answer: The Commission has defined indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The United States Court of Appeals for the District of Columbia Circuit, while upholding the Commission's authority to restrict the daytime broadcast of indecent material under this definition, remanded to the Commission two broadcast indecency cases involving evening broadcasts. See Action for Children's Television v. F.C.C., 852 F.2d 1332 (D.C. Cir. 1988). In so doing, the court ruled that the Commission had not adequately justified its prohibition on the broadcast of indecent material during evening hours prior to midnight. It therefore concluded that the Commission may not enforce the indecency prohibition during evening hours until it develops a sufficient record to support an evening hours enforcement rule. After this decision, Congress passed legislation requiring the Commission to adopt rules enforcing the prohibition against indecent broadcasts 24 hours a day, and the Commission promptly complied with that mandate. The Court of Appeals for the District of Columbia Circuit, however, stayed implementation of the new rule on January 23, 1989. Until and unless this rule is ultimately affirmed, therefore, we are still bound by the Court of Appeals' ruling in Action for Children's Television v. F.C.C. As stated above, that decision currently limits our enforcement authority to daytime broadcasts.

Question: How many indecency complaints do you have pending against radio and television stations? How many stations have you taken any type of action against in the last year?

Answer: The vast majority of indecency complaints that the Commission has received have been either of a general nature or, if specific, unsupported by a tape or transcript. In order to make reasoned judgments concerning possibly indecent or obscene material, the staff normally requires that complainants supply it with the date and time of broadcast, the station's call sign, and tape recordings or transcripts of, or significant excerpts from, the complained of programming. The Commission currently has on file approximately 100 complaints of broadcast indecency supported by this type of showing.

The Commission has taken action against one station in the past year with respect to broadcast indecency. On June 23, 1988, the Commission adopted a Notice of Apparent Liability for a monetary forfeiture against station KZKC(TV), Kansas City, Missouri, as a result of its evening broadcast of material the Commission determined to be indecent. However, because of the decision in the above described case, Action for Children's Television v. F.C.C., the Commission stayed the release of that Notice of Apparent Liability. The Commission currently has a number of complaints involving daytime broadcasts under active consideration.

Broadcast Allocation Issues

Question: One of the reasons for creating the FCC was to prevent the technical interference among radio stations' signals which was so rampant in the infancy of radio broadcasting. Now, much of the AM band is riddled with interference, especially at night. What is the FCC doing to remedy this serious and apparently growing problem?

Answer: The congestion in the AM band is the result of technical characteristics and the number of licensees. The AM broadcast spectrum originally was chosen as the best available for development as a broadcast service within the capability of the technology of the time, which was the late 1920s. Initially, this spectrum was ideal, because it permitted what was then perceived as high quality service during the daytime, and lesser quality but nevertheless useful service at night. Indeed, for many people in the country without daytime service, the nighttime propagation characteristics of the AM band were regarded as a blessing.

This situation continued until the mid-60s. But during that time demand for more AM service was intense, and the Commission, with the concurrence of the broadcast industry, was compelled to make decisions that favored service quantity over quality. For many years, this was not a problem, because the quality afforded by the AM service was all that the public expected.

However, the past two decades have demonstrated a rising consumer expectation of quality. Very high quality records, the growth of FM broadcasting, cassette tape, and most recently, compact disc recordings all provide high quality audio to consumers. These media reveal the limitations of the decades old engineering criteria used in making assignments in the AM service. Consequently, in recent years we have seen a considerable decline in the listener demand for AM service which has resulted in a decline in the demand for new AM station licenses. Because of this relatively low rate of increase in new AM stations, interference levels have remained fairly constant.

However, the Commission is doing its best to alleviate the situation. Five different rule making proceedings are underway at this time -- a sixth is in the planning stages --that are intended to improve the technical quality of the AM service. For example, in April, the Commission adopted a new emission standard for AM stations that becomes effective in June of next year. It should considerably reduce nighttime adjacent channel interference. The other proceedings are looking at updating methods of predicting AM signal propagation and interference levels. Of potentially greatest value, however, is a proposal that would permit AM licensees to enter into negotiations that would permit some licensees to reduce power or even to go off the air, for the purpose of improving the quality of the signals of those licensees that remain. These proceedings provide ample testimony to the Commission's determination to improve the quality of the AM service.

Question: Pending before the Commission is a Notice of Inquiry that proposes to develop service in the expanded AM band. One proposal is the concept of national licensing for the ten frequencies that are available. Under this proposal the Commission would select ten entities to develop this band. These national licensees would be able to select the individuals that would occupy the frequency in particular markets. Doesn't this proposal conflict with the Commission's statutory obligations to license stations to local communities?

Can the Commission legally delegate its authority to award licenses to these "national licensees"?

Who would determine the power of each individual facility? Can the national licensee legally select the power and interference levels for each facility?

Answer: The Commission is presently considering a variety of options for implementing the expanded band. In addition to the difficulties inherent in AM operation, stations on these frequencies will have to survive both low receiver penetration in the early years and relatively poor coverage. In hopes of identifying options that would overcome these problems, and perhaps improve the viability of the entire AM service, the Commission sought comment on national licensing. Under this plan, a frequency would be developed by a single entity. That single entity would be able to establish transmitters on that frequency in many different locations in the U.S. Such an approach could create a critical mass of audience to attract national advertising and a national presence that might make large scale (national) promotion cost effective since the entity might operate transmitters in many different population centers. Viability of stations could be enhanced greatly by both of these effects.

No delegation of our licensing function is envisioned by the national licensing plan. What is contemplated is a two-step scheme similar to that already established for nationwide paging. Under the first step, applicants would be licensed to use a particular national frequency. Under step two, the

Commission would authorize actual facilities. There does not appear to be any statutory bar to a national licensing scheme. Section 307(b) does not require the Commission to adopt a licensing scheme which requires detailed, individualized community-by-community determinations with respect to every radio facility it now authorizes. In affirming the Commission's authority to establish a nationwide direct broadcast satellite service, the Court of Appeals emphasized in National Association of Broadcasters v. FCC, 740 F.2d 1190, 1198 (D.C. Cir. 1984), that Section 307(b) does not mandate a particular system of broadcasting.

Question: In several proceedings (HDTV, AM Improvements, Resolution of Channel 14 and 69 Interference) the Commission has proposed to resolve spectrum disputes through a process of private interference negotiations. How does this process serve the public as opposed to private interests? Doesn't this conflict with the Communications Act which states that licensees do not have a vested property right in the spectrum? Would not private negotiated interference rights eventually lead to better service in affluent areas and more interference in areas with less income? Isn't this just another example of the Commission abdicating its responsibilities to private interests simply to avoid making tough decisions.

Answer: The interference criteria employed by the FCC to make assigments in the various broadcast services are grounded on a large number of assumptions. It is recognized that the conditions which actually exist for a particular set of stations may vary widely from the assumed conditions. Unfortunately, the number of factors, and the range of values which can arise, are so large as to make it impossible for the FCC to account for them on a case-by-case basis. Hence, some stations may be receiving too much interference protection (relative to some theoretical optimum) while others receive too little. In light of this, the Commission has sought comment on whether scarce spectrum capacity would be better utilized, and the public better served, if broadcast licensees had some flexibility to adjust their coverages to better account for actual conditions.

The statutory bar to spectrum ownership does not preclude licensees from having some discretion to adjust their facilities to account for local conditions. Through the coordination process, licensees in the satellite and microwave services have for many years traded spectrum capacity to effect better spectrum utilization. In the broadcast context, all such adjustments would be subject to Commission review and approval, and comment has been requested on the degree to which this licensee discretion should be limited. Moreover, broadcast licenses would continue to be issued for fixed five and seven year terms.

It is extremely unlikely that greater licensee discretion would result in a systematic exclusion of service to certain less affluent sections of a community. In addition to the fact that such a practice is unlikely to be economically viable, it could not be achieved in actuality because broadcast signal coverage can not be "carved up" in some precise fashion.

Question: Many communications experts believe that FCC spectrum allocations policies, long applicable to AM broadcasting, have been the primary cause of AM's reduced technical quality, its current economic problems and its diminished capacity for providing local public service. Among these policies is the greater use of AM "directional" antennas and the "demand" system (as opposed to the more structured "table of allocations" system used in FM broadcasting). Instead of learning from its mistakes in AM, it's my understanding that the Commission actually is starting to use FM directional antennas in the commercial portion of the FM band and is moving toward what, in essence, is a demand system for FM allocations. What is the justification for those measures?

Answer: The use of directional antennas has had relatively little effect on AM quality. The service-quality problems are due primarily to two factors: natural and man-made noise and static; and nighttime interference levels which have gradually increased over the past few decades. These conditions are not factors in the FM service.

The new rules permitting limited use of the directional antennas were adopted primarily to give licensees greater flexibility in using sites. Greater numbers of environmental and FAA restrictions have limited severely licensees options in transmitter location, and these new procedures should reduce substantially the number of short space waiver requests the Commission receives. There are no plans either to employ directional antennas to squeeze in new allotments or to abandon the FM Table of Allotments.

Question: This proposal fundamentally relies on "contour protection" to avoid interference, which is a more complex process than simply relying on geographic spacing. Does the Commission have the necessary resources and data base necessary to implement this new policy?

Answer: At the present time the Commission does not have in place all the data bases and computer programs needed to implement the new policy. However, in response to interest shown earlier by Congress (see FCC Authorization Act of 1987, House Report 100-363, Terrain Shielding, p. 6), the Commission is committed to developing these capabilities. A propagation modeling effort is being undertaken in two phases. Last October, we awarded a contract for the development of a propagation data base, the essential first step toward the completion of a propagation model. The results from this contract were available in May. A second contract will be necessary for the design of the model itself. FY 88 and 89 budget constraints make it impossible to predict when this contract can be awarded. Although the Commission's own staff is performing some in-house research to supplement contract efforts, other pressing matters, such as HDTV studies, continue to occupy staff time.

Although forecasting the completion date of a final propagation model is most difficult at this time, the Commission remains committed to the task. We will, of course, continue to report progress as it occurs.

Question: When the Commission established the FM translator service in the 1970s, the intention was to provide a means of extending radio service to sparsely populated areas that did not have the financial wherewithal to support commercial broadcast stations. Due to many ambiguities and loopholes in the Commission's FM translator rules, hundreds of translators, even translator "networks," now are operating in radio markets already well served by local radio broadcasters and to the detriment of those broadcasters.

> Because full service broadcast stations are licensed to serve their communities, should the Commission allow low cost, low powered translators to import distant radio signals and compete with local stations? Won't this place local broadcasters at a competitive disadvantage? Does the FCC plan to reform its translator rules to return to the agency's original intent?

Answer: The Commission is very concerned about allegations made by several parties that ambiguities in our rules permit translators to extend service beyond the original intent of the rules. The Commission initiated a Notice of Inquiry in 1988 to study the role of translators in the radio broadcast service. Our objective in this proceeding is to examine and, where necessary or appropriate, to revise our policy regarding the authorization and operation of translators consistent with our overall allocations plan. We stated, in the Notice that our longstanding view is that the proper role of translators is to provide supplementary service to unserved and underserved areas, and to areas unable to receive satisfactory reception within the normal predicted service areas of primary stations. We continue to believe that the most effective and efficient means of providing radio service to the public is through the higher-power facilities of full-service stations. The staff is now formulating recommendations that would more effectively carry out our translator policy.

Additional Questions

Question: The Commission's minority and female ownership policies have been questioned on the grounds that they promote shams or minority fronts. I agree that applicants using minority fronts do not benefit minorities because the minorities have no power. Has the Commission given consideration to strengthening the ownership criteria in comparative hearing cases to eliminate sham applicants? For example, it has been suggested that permitting limited partnerships and voting and nonvoting stock corporations promotes shams. Has the Commission considered letting equity alone determine ownership for purposes of integration? Has the Commission considered other changes such as limiting settlements and reinstatement of the three-year holding rule for new licensees? Has the Commission given any consideration to any other ways of improving the effectiveness of these policies?

Answer: The Commission has recently taken significant steps to eliminate sham applicants from its comparative processes. On March 30, 1989, the Commission

amended Form 301, the application form for construction permits for broadcast facilities, to require all applicants to submit, among other things, more ownership information in their application. Under the new Form 301, all applicants will be required to (1) specify the date and location of the filing of the applicant's enabling charter (if the applicant is a non-individual); (2) identify all equity owners in the applicant, including general and limited partners and voting and nonvoting shareholders; and (3) disclose any future ownership rights in the applicant. These changes are intended, among other things, to prevent applicants from setting up minority or female fronted corporations or limited partnerships to gain an integration preference. Under current Commission policy, if the Commission determines that an applicant's organizational structure is a sham, and merely erected to obtain an integration preference, the Commission will deny that applicant an integration preference in the comparative hearing. The new reporting requirements, which require an applicant to identify and provide information regarding all equity owners in the applicant, including limited partners and nonvoting shareholders, will enable parties to the comparative hearings to identify the real parties-in-interest in the applicant, and thereby expose these shams. These Form 301 amendments are scheduled to become effective upon approval by the Office of Management and Budget, which the Commission anticipates receiving by June 26, 1989.

The Commission also adopted on March 30, 1989, limitations on settlements of competing applications and petitions to deny in the license renewal context. These restrictions are intended to curb abuse of the Commission's license renewal process by preventing applicants or petitioners from filing challenges to a license renewal application merely to settle out for a profit. Although not aimed per se at the filing of sham applications, these measures should prove helpful in reducing the filing of competing applications by insincere or non-bona fide applicants. In addition, the Commission has pending a related rule making proceeding (MM Docket No. 87-314) in which it has raised the question of whether similar limitations on settlements of applications in the new licensing context are advisable.

The Commission has not considered, in the context of the existing comparative hearing processes, letting equity alone determine ownership for purposes of integration. However, we are considering applying the lottery procedures now applicable to low power television stations to new full power broadcast stations where most types of ownership/equity interests (i.e., limited partnership interests) alone would be the basis for awarding of a preference. The Commission's lottery proposal is based upon the preference criteria and other requirements expressly set forth in the statute. This is a matter that has been raised by some commenters in the lottery proposal proceeding and one that, accordingly, will be fully explored there.

We are fully cognizant that in the past it has been possible for applicants to structure their arrangements through the use of limited partnerships and nonvoting interests primarily for the purpose of obtaining increased integration credit and that it is still a concern. We are equally

concerned, however, that letting equity alone determine ownership for purposes of integration in order to reduce sham applicants might prevent legitimate applicants, especially minorities and women, from using limited partnership arrangements to raise capital to construct and operate broadcast stations. We are hopeful, however, that our new Form 301 reporting requirements discussed above will prove adequate to deal with the sham problem without restricting legitimate applicants from obtaining the integration preferences they deserve. These requirements should help expose minority and female fronted sham applicants, and ensure that integration preferences are only granted to those owners who, regardless of their equity interest, will have legal responsibility, as well as control over the management and operation of the station.

Finally, in view of the measures discussed above that have already been taken by the Commission, we do not believe that reinstatement of the three-year holding rule for new licensees would be essential or appropriate. As we explained above in response to your question on the Commission's former anti-trafficking rule, just recently, the Commission reconsidered the need for an anti-trafficking rule when it affirmed a dismissal of a petition seeking adoption of a five-year holding rule for new licensees. It determined that its reasons for eliminating its previous three-year rule were still valid, namely, that such a rule would operate as a barrier to entry into the broadcast business; artificially reduce the number of properties available for sale and thereby restrict opportunities for purchasers, including minorities and women; and possibly cause deterioration of service by preventing a station from being transferred to a capable buyer and willing operator. Of course, the Commission remains open to any suggestions for improving the efficacy of its policies.

Question: In the Marco, Florida case, the Commission permitted a third party to buy out the competing applicants for a new broadcast station. Please explain why this is not a private auction, which undermines the comparative hearing process.

Answer: The Marco, Florida case, which is currently pending before the Commission on reconsideration, is a contested proceeding involving mutually exclusive applications for a broadcast authorization. Consequently, the case is a "restricted adjudicative proceeding" and will remain so until it is no longer subject to Commission or court review or reconsideration, and the Commission's ex parte rules prevent me from discussing any of the substantive issues involved at this time. See 47 CFR Sections 1.1202, 1.1208. In their petitions for reconsideration, several parties raise the question of whether the Marco settlement constitutes a "private auction." The Commission will therefore address this issue when it acts on those petitions. We will provide you with a copy of our final action as soon as it is released.

Question: Mr. Patrick, could you provide us with data on how many applications for review in adjudicatory proceedings have been pending for over 1 year? over 2 years? over 3 years or longer?

Answer: There are currently ten applications for review in adjudicatory proceedings that have been pending for over one year. Of those ten applications for review, five have been pending for over two years. No application for review has been pending for over three years. Two of the foregoing ten cases have been held in abeyance at the request of the parties because of pending settlement negotiations. Of the remaining eight cases, the resolution of four has been delayed because of the late filing of significant supplemental pleadings by the parties.

Question: Congress has made it abundantly clear through legislation that the minority ownership policies are to be retained and encouraged. You have told Congress that you would faithfully execute any law we passed, regardless of your personal feelings. Yet, you voted not to seek reconsideration of the Shurberg case, striking down the minority distress sale policy. Could you explain how that vote can be squared with the legislative mandate?

Answer: As I stated in my dissenting statement, I would have unhesitatingly agreed to seek reconsideration of the Shurberg case had my fellow Commissioners agreed to discuss all relevant case law when asking the U.S. Court of Appeals for the District of Columbia Circuit for rehearing en banc in the Shurberg case. The law with respect to the constitutionality of the Commission's minority ownership policies is in a state of substantial confusion. This is illustrated by the fact that the two most recent judicial decisions addressing the issue -- Shurberg and Winter Park -- produced a total of five separate opinions. Indeed, although both cases addressed the constitutionality of minority ownership policies, they reached opposite

results. Had they used consistent reasoning, the contrasting decisions might be explainable by differences in the policies at issue. The problem, however, is that the two panels used inconsistent and conflicting reasoning, thus resulting in confusion and uncertainty.

For the benefit of all concerned, I believe it is imperative for the judiciary to clarify the law in this difficult area. Thus, I would have petitioned the D.C. Circuit to hear Shurberg en banc and would have supported a petition for rehearing of Winter Park. Both cases could then be considered together so that the court could give us definitive guidance. But I cannot support my fellow Commissioners' approach of requesting only partial enlightenment in the area.

The Commission has fully complied with the legislative mandate by reimplementing its minority ownership policies. We continue to apply those policies faithfully. I do not believe, however, that the mandate prevents us from seeking clarification from the court on this important matter.

Question: **Generally, in litigation, the prevailing party does not seek reconsideration of cases that it has won. The Court in Winter Park upheld the minority preference. In your dissent, you state that there is precedent to support the constitutionality of the minority preference policy. Yet, you question whether that precedent remains valid. In light of the Congressional mandate to support the preference policies, why have you done so?**

Answer: As previously mentioned, I do not believe that it is inconsistent with the Congressional mandate to ask the D.C. Circuit to resolve the conflict that now exists within the Circuit on the constitutionality of our minority ownership policies. As long as the Circuit remains sharply divided on this issue, its conflicting precedents will continue to throw a cloud of uncertainty over the legality of these measures. Therefore, I believe that the most appropriate course of action would be for the D.C. Circuit en banc to resolve the issue definitively. A definitive resolution could settle this complex area of the law and could eliminate the continued uncertainty surrounding the minority ownership policies.

Senator INOUYE. I thank you very much, Mr. Chairman.

I am certain you realize that all of our committees have to go through this painful ritual in which we listen to agency heads telling us about what the budgetary constraints have meant to their operations. We wish we could accommodate everything that you ask for. But as far as this committee is concerned, we have responded, I think rather positively, to the administration's request, and the bill that will be introduced today will reflect precisely what the administration wants.

Having said that, I was looking over this morning's issue of Communications Daily, and there is a quotation here that says the following. One of your colleagues in the FCC said to one of the correspondents, "We've been held a political hostage by Congress because of Democratic leadership's opposition to deregulatory policies of Patrick and his immediate predecessor." Do you agree with that, that we have held you hostage?

Mr. PATRICK. Mr. Chairman, I do not believe that. That is not a quote, as you have indicated, from me, and I don't believe that it is the case.

I think that this agency, like every other agency in the Federal Government has had to take its fair share of cuts as a result of the Federal deficit and the situation that we are all in.

We certainly have disagreed from time to time about policy, but I see that as a matter independent from the question of funding.

Senator INOUYE. This same official apparently said that your Mass Media Bureau "is losing engineers by the buckets and processing work isn't being done." How many engineers have you lost?

Mr. PATRICK. Mr. Chairman, I asked our Chief of the Mass Media Bureau that exact question last night, and he gave me one example in the area of audio processing, the radio side. He had lost some 10 engineers, and that is having a very material effect on his ability to process the FM applications.

We have that data. I could give you that.

Senator INOUYE. How many engineers do you have left now?

Mr. PATRICK. Overall in the agency? I don't have that before me, but I know we have that number, and I know it is a substantially reduced number from that with which we started the year.

Senator INOUYE. Mr. Chairman, I am certain you realize that I have the great pleasure and privilege of presiding over two other committees, and we have similar hearings. But this is the only agency that somehow communicates with this committee via the press. I read about this testimony in Communications Daily before the hearings.

Do you approve of that practice?

Mr. PATRICK. Well, Mr. Chairman, the testimony that I am going to submit to the committee is submitted to the committee a couple of days before my appearance, and I believe it is made available to the press at that time.

I got a call last night. I believe it was from Communications Daily. And I was asked about our fiscal situation, which has not been a big secret, and I did comment upon it.

I have tried to communicate material and sensitive information first to this committee, but certainly at the same time, I've tried to be open to the press. And I didn't view this question of our fiscal problems to be particularly surprising.

Senator INOUYE. I also have received some of your letters via the press. I don't think that is a good practice.

Mr. PATRICK. Well, that is not our practice, to give our letters to the press before we deliver them to committee. So, if that is happening, that is out of channels and not something that I have authorized.

Senator INOUYE. On the lack of funds, what function has been hurt the most as a result of this budgetary crunch?

Mr. PATRICK. I think that in general, Mr. Chairman, our ability to process routine applications and complaints has probably suffered the most.

The reason I say that is because, for instance, in the area of the common carrier tariffs and tariff investigations, as you know, the Congress last year, I believe, passed legislation which put specific chronological requirements for the period of time within which we could process tariff investigations and process tariff complaints, indeed, act upon the tariffs themselves.

I am happy to report to you that we have complied with those deadlines, and within my ability and God willing, we will continue to comply with those deadlines. But the necessary effect of that is to pull resources away from other areas that do not have the same statutory constraint. And to answer your question, therefore, applications for licenses to provide various services and informal complaints tend to now take longer to process simply because, even though I think we are operating more efficiently, we have fewer bodies there to process those applications.

I have data on that, and again I can supply chapter and verse on the effect. I have actually had quantified the effect on backlogs of our resource situation.

Senator INOUYE. Yes. I would like to have that because, if possible, we would like to increase your funding.

Has the lack of funds had any negative impact upon worldwide competition in communications?

Mr. PATRICK. The lack of funds" impact on worldwide competition.

Senator INOUYE. Competitiveness, let's say, because your agency does play some role in furthering our cause.

Mr. PATRICK. That is absolutely correct, Mr. Chairman.

And I would say that one of the more dramatic impacts on the Commission at least in the area of travel has been in the international area. There are countless number of conferences and meetings of the IFRB, for instance, that we do play an important role in, and we have simply had to make a judgment not to attend many of the conferences and the meetings that we have attended in the past. And that may, indeed, have some impact upon policy, especially as it impacts American interests.

Now, I am not here to tell you that I think it was appropriate for FCC persons to be attending every conference and I would still take a very conservative approach as to how we spend our travel funds. But I also know that our travel budget internationally has been severely cut, and there are probably some meetings that we are missing now because of the money.

Senator INOUYE. Thank you very much.

Senator Gorton?

Senator GORTON. Mr. Chairman, just one question. I was interested, Chairman Patrick, in your statement about a loss of engineers and other personnel. Would you ascribe that loss solely to the budget of the Commission or does the question of what kind of jobs Federal employees can go to after they leave the Federal Government, which has been so much in the newspapers today, have something to do with it? Are some of the engineers concerned about whether they can find employment under the new conflict of interest laws?

Mr. PATRICK. Senator, I couldn't say whether or not those engineers at their level and given their responsibilities would be affected or how they would be affected by the new conflicts laws. So, I really couldn't comment on that. But I do think that their judgment is affected by the disparity in compensation and working conditions that one sees in the private versus the public sector.

I have the privilege of chairing, and all our employees have the privilege of working at, an agency that is involved in the cutting edge of technology and is involved in very, very important policy matters. And as a consequence, it makes persons who have experience at the agency quite valuable to the private sector. So, we are always fighting this tendency to migrate out of the agency.

Senator GORTON. That goes beyond engineers.

Mr. PATRICK. It goes beyond engineers. It goes to our lawyers and others as well.

Now, what has changed, Senator Gorton, is that we had this type of turnover in the past, but in the past we could fill in. We had the money, as we suffered attrition, to fill in behind these individuals as they left. But I, starting this year with effectively a $5 million deficit, essentially ordered that we would have a hiring freeze except in exceptional circumstances. And so, we are suffering normal attrition, which I think is high at the agency for the reasons I have stated, but we can't fill in.

Senator GORTON. Thank you, Mr. Chairman. That's all I have.

Senator INOUYE. Thank you.

Senator Burns?

Senator BURNS. Mr. Chairman, thank you for coming down this morning.

I am concerned about the loss of engineers too, as some of us would be on this committee. Do you have any kind of an idea on what the rollback in money and the loss of engineers does to your processing of new applications and reauthorizations?

Mr. PATRICK. Yes, sir, Senator. I do have some of that information. And I understood the Chairman to ask that we supplement the record, and I will do that.

But let me answer your question by saying that I have before me a quantification of our backlog levels—the number of applications that are pending at any one point in time at the agency. And, it indicates that the backlogs have increased over the past several quarters.

For instance, and very specifically, we are now looking at the Common Carrier Bureau, which in the first quarter of fiscal year 1988 had a backlog level, number of applications pending at that moment in time, of 10,322. Well, by the second quarter, it had increased to 16,701. That obviously has an impact on the average amount of time, the average number of months, it is going to take to process any one of those particular applications.

The same statistic for the Mass Media Bureau is 3,984 in the first quarter of 1988, and 5,061 in the second quarter of fiscal year 1989, I should say that represents a percentage change of about a 27 percent increase in backlog.

So, we have quantified that, and I can assure you that we have looked from an administrative perspective at the overview and tried to make judgments as to where we should allocate resources so as to minimize the impact upon the public.

And as I indicated to the Chairman, there are some areas where I have no discretion. The Congress has indicated I must conclude a tariff investigation within a year. Well, we will do it, but the necessary effect is I must take bodies from one area and put them into another area.

Senator BURNS. It always seems to me that anytime those backlogs really pile up, it is a very expensive situation as far as the operators are concerned. I just wanted to clarify that.

And I noticed your accomplishments here. I think you are to be congratulated. I just wonder about the enforcement of that part of the Omnibus Drug Initiative Act of 1988 on the dial-a-porn. Is that operating satisfactorily in your judgment?

Mr. PATRICK. Yes, sir, it is. As you know, there has been some judicial action in that area. The court has stayed that portion of the statute which goes to indecency. But we have gone ahead nonetheless and continued to take action with respect to cases that appear to be obscene, and therefore are still fully prosecutable. And I am proud to say that the FCC has taken a very aggressive stand and has taken very significant actions in this area. We have issued a number of notices of apparent liability. We have entered into some settlements with some defendants which effectively put them out of business. And we are continuing to do that.

Senator BURNS. I was driving down the road the other day and flipped on the radio. I am not familiar with all the radio stations here in the east coast as of yet. I'm sort of a dialer. I came out of the radio business, and I'm a hunter. You know, I just listen and so I'm sort of a nut that way.

But I ran across some guy on the radio, and something came up. I never ran it down. But the language he was using was just—now, I evolved out of stockyard. So, I know what bad language is.

I can identify it and I use it very readily every now and again, but not on the radio airwaves. I'm wondering if you are having some problems in this area. Does the law need strengthening or anything like that?

Mr. PATRICK. Senator, we are acting in this area. It is a very active area in terms of complaints that are filed with the Commission. And the Commission took action recently against a number of radio stations and, in fact, one television station. And those were the first actions that have been taken by the FCC in many, many years.

That having been said, does the law need strengthening? Probably not in the sense that the law here is ultimately interpreted by the courts, and it has to do with what actions you can take against language or a video product that is indecent as distinguished from obscene. And the law there is very difficult, and we have suffered another stay in that area relating to indecency from the courts. I think that issue ultimately will have to be resolved by the courts. In the interim, we are taking the enforcement actions that we can.

Senator BURNS. Thank you, Mr. Chairman. Thank you very much. That's all I have.

Senator INOUYE. Thank you very much.

Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

Chairman Patrick, since this is your last appearance, I want to thank you for your outstanding service. I think you have done a very fine job in an era of rapidly changing technologies. And I think that we are far better off for your stewardship. Obviously, we have not agreed from time to time on very specific issues. Overall I think you have done a fine job and we appreciate it. We wish you every success in your future endeavors.

I also would like to express appreciation for your efforts in the HDTV area. I hope you will brief your successors well on that. It is a key issue, and we have to make very difficult decisions as to exactly what the involvement of the Federal Government is going to be in this new generation of electronics. If you have any parting words for us as to how we should address that, we would certainly appreciate it.

I also want to congratulate you for the efforts to suppress this dial-a-porn business which frankly is a terrible situation. I think you handled it without inflicting damage on anyone's constitutional rights. I think it will have to continue to be watched in the future.

Mr. Chairman, the FAA and the NTSB have expressed concern about the sharing of aviation safety traffic and commercial mobile satellite traffic. Do you share that concern?

Mr. PATRICK. Yes, generally I do, Senator. The question of insuring that there is adequate spectrum made available for purposes of aviation safety is a very important question and one that we pay particular attention to. Yes.

Senator MCCAIN. Well, would it be reasonable to conduct tests? The FAA would like to see a series of tests to ensure that the spectrum can be shared. Would that be appropriate, do you think?

Mr. PATRICK. Well, Senator, we are always willing to cooperate with the FAA to make sure that whatever is necessary is done in order to ensure safety of flight as it relates to radio matters.

I am not quite sure the context in which you are asking this question. We have a whole debate ongoing and, in fact, a very active docket with respect to this matter of allocating spectrum in the L band. And that is an ongoing proceeding. If you are talking about something specific in that proceeding, we would have to put it in that context.

Senator MCCAIN. I guess what I am asking is that I think the FAA would like to run some kind of monitoring or test to see exactly whether these two entities can exist in the same spectrum and not impair safety. My understanding is that there has been some reluctance to engage in that on the part of the FCC. I see you are joined by one of your colleagues here.

Mr. PATRICK. Yes, I am joined by Dr. Stanley who heads our Office of Engineering and Technology and who is working very closely with the FAA on these issues.

Let me just put it into context by saying this involves a question of sharing spectrum as between the aviation interests and the land mobile satellite interest. The United States Government went to mobile WARC with the position, which was endorsed by the FCC, and that FAA was part of that decision at the time and endorsed the decision at the time. The FAA now has indicated some concerns about accommodating aviation safety, as you indicate, Senator. We have at the same time an ongoing docket to implement the decisions, that—or reconsideration to implement the decisions that we had made earlier. And we are working closely with the FAA to ensure that aviation interests are accommodated.

The decision that the Commission made was to devote a certain amount of spectrum to aviation, a certain amount of spectrum to land mobile, but to make sure that the aviation safety interest had preemptible, real-time access to all of the spectrum that it would need. And I am committed to making sure that that is a real guarantee and that it is functional and it works. And I believe that we are working with the FAA to ensure that, but couldn't comment more specifically than that.

Let me ask Dr. Stanley to update us further.

Dr. STANLEY. The general allocation matter has had the support of NTIA and the FAA. We are also in agreement as to the meaning of the allocation as it relates to aviation safety. We have been working with FAA for some time regarding the allocation, and as the Chairman said, we have had several meetings addressing exactly how that would take place. The implementation issue remains very much before us right now, and satisfaction of aviation safety, of course, is a very high priority.

Senator MCCAIN. I hope you would just look at it for me and maybe get back to me later on.

Mr. PATRICK. I would be happy to do that.

Senator MCCAIN. I would hate to have an aircraft accident take place because of interference on a airway. I don't have to tell you that.

Is the current level of rule enforcement by the FCC adequate to maintain control of the spectrum? In other words, we need to beef up the fines and raise them, which I understand have not been raised since the 1930s.

Mr. PATRICK. That's correct. Our fine authority is very, very limited just in terms of the numbers, and I am pleased to note, as you know, that the authorization bill that is being considered here would increase the monetary level of our fining authority, and I think that is extraordinarily important.

I tend to be very strong on enforcement. I think that the Commission has deregulated a lot, but the rules that we have in place are in place for a purpose, and it is even more important in this environment that we enforce them vigorously. But where my authority to impose a forfeiture or a fine is very, very constrained, my ability to inflict pain and therefore deter this type of conduct is very limited.

So, yes, I think we need increase finding authority, and we are going to get it here.

The other thing that we need is just general budgetary assistance. My people in the field are working with equipment that is extraordinarily outdated.

Senator McCain. They're not adequately funded.

Mr. Patrick. And not adequately funded.

And part of our effectively $10 million request over our 1989 level would go to improving our technical equipment and our ADP and what have you. That would help substantially in terms of our enforcement efforts in the field.

Senator McCain. Do you have any words of wisdom for us on HDTV?

Mr. Patrick. Well, Senator, as you indicated, that is an extraordinarily important issue that many entities and institutions here in Washington are interested in and following.

My answer to your question is yes, and it is this. I'm not sure these are words of wisdom, but these are the words I would give you.

There has been a great deal of focus upon the trade implications of HDTV, and certainly that is appropriate. There are trade implications. There are potentially great impacts on technology.

But a resolution of the HDTV issue ultimately depends upon two things: one, setting a technical standard by which a higher resolution format will be transmitted; and two, making available to over-the-air broadcasters a sufficient increment of additional spectrum to put them in a position to deliver that product over the air. Those are two critical, bottom line, make-break issues that have to be resolved. They are pending squarely before the Commission. We are engaging them as we speak.

But my point is in all of this discussion of the broader implications, we cannot lose sight of the fact that until we make progress on those core issues, we cannot either signal to American industry what it is we want them to produce or, equally important, put broadcasters eventually in a position to compete with other media that may have access to this technology.

So, I would just bring back into focus those issues. Those are the core issues, and they are very, very difficult.

I would say that our supplemental request or our budget request for fiscal year 1990, to the extent it provides a slight increase, will be helpful in that regard. Dr. Stanley, who was just here, is charged with the responsibility of doing some very, very difficult computations in terms of how we can put broadcasters in possession of this additional spectrum. And it takes a number of man-years of effort.

Senator McCain. When do you think we would get some guidance from FCC on this?

Mr. Patrick. I dare say that sitting to my right is probably the most knowledgeable person, seriously, in Washington right now with respect to the state of play on HDTV. And I will let him comment on that.

Mr. FELKER. I think we are hopeful that the Commission will be in a position to act on the standard and spectrum question in 1992, perhaps late 1992.

As you probably know, the Commission empaneled an advisory committee chaired by Dick Wiley, and the advisory committee has now filed or submitted two interim reports assisting the Commission in addressing the various issues before it. And their schedule is one looking toward testing of the various component systems beginning early next year and concluding, hopefully, within a year at which point the results of those tests will be analyzed and presented to the Commission. And then I think the Commission should be in a position to make some decisions.

Senator MCCAIN. Well, if there is anything that we can do to help expedite that process, I hope you will bring it to the attention of the subcommittee because, obviously as you say—I agree with your statement—until there is a knowledge on the part of industry as to what their playing field is, it's going to be very difficult for them to get too deeply involved.

Mr. FELKER. If I could just make one more point with regard to words of wisdom. I think there seems to be a fair amount of concern that the U.S. is behind the rest of the world in HDTV. And I understand why there is that sentiment, I think it is also fair to say that the rest of the world is not doing what the U.S. is doing in terms of high definition television. We are the only country that is looking seriously at terrestrial broadcasting as the centerpiece, if you will, of high definition television. And as a result, a number of other important administrations are taking another look at their approach. And, in fact, in a lot of ways, they are awaiting our decision. One prime reason for that, of course, is that we are a big television market.

Senator MCCAIN. Thank you very much, Mr. Chairman.

Senator INOUYE. Thank you.

Senator Exon?

Senator EXON. Mr. Chairman, thank you very much.

Welcome to you, Mr. Patrick, and I wish you well in your future endeavors.

Mr. PATRICK. Thank you.

Senator EXON. Since this is the last time you likely will appear before the committee and the subcommittee, I think it is a time when I would like to ask you to take a look back at what has transpired, good and bad, during your administration and based on that, what advice do you have for us in the future? And so, I ask these series of questions more or less in that context.

I have been receiving an increasing number of complaints from my constituents with regard to the quality or lack thereof of television programs, especially with regard to sexually suggestive material, extreme violence and other things.

My first question, though, to you is does the FCC pay much attention to who watches broadcast television today. I have read some articles that indicate that the average little child in the United States

watches television four and five times as much as do his or her counterparts in other parts of the industrialized world. Do you think that is an accurate assessment of how mesmerized our youngsters are with television?

Mr. PATRICK. Senator Exon, I wouldn't be able to comment specifically on whether that number is right. Let me try to respond to your question, however, by saying that, yes, we do become aware from time to time of statistics which go to the demographics of television, if you will, specifically in the context of looking at a number of issues related to children's television. That type of data is filed.

Senator EXON. I am not so much interested in children's television. You know, we can always improve that. I am interested primarily in television that is not designed for children, but is coming before children by the flip of a dial.

Mr. PATRICK. Well, as I say, we are generally aware of the amount of television product that is consumed. My only point was this information usually comes up in some specific context. We don't have an ongoing explicit monitoring effort with respect to that issue specifically.

If I could, because you sort of invited comments on the bigger picture, if you will, let me say that we certainly are in receipt of a lot of complaints which go to the caliber and the quality of television product that is delivered. And, of course, these are difficult areas. The Commission is precluded by its charter from censorship. We have First Amendment constraints.

All of that having been said, I am proud to say that this Commission under my tenure has taken several actions in the area of indecency, has attempted to enforce the Congress" statutory guidance with respect to the prohibition of obscene and indecent broadcasting. And it has not been easy. It has been very litigious. But we have engaged that issue.

Senator EXON. Are you satisfied with the authority that the Federal Communications Commission now has to do anything directly or indirectly about what I think most people would have to agree is the deteriorating quality of our overall television with regard to the subjects that I mentioned?

Do you think the quality of television is improving in these areas today of sex and violence, or do you think it is going downhill?

Mr. PATRICK. Well, Senator, let me just say, as you probably know, as a philosophical matter, I do not think it is appropriate for me to try to act in a way that will cause television to reflect my view of what is appropriate, what is good quality and what have you.

I think one of the things that we have tried to do is to increase the channel capacity, if you will, into the home by and through licensing of additional independent stations or deregulation of cable, or I should say the Congress" deregulation of cable, which has vastly increased the number of pipelines into the home. I think under those circumstances, you are going to find a situation in which much of the product that is delivered, or some of the product that is delivered, is objectionable to some members of the community, and other aspects of the programming will be better and will be improving.

I am not among those who thinks that the state of television is on the edge of the abyss. There certainly is programming on television that I find objectionable, but there is a lot which I find admirable as well.

Senator EXON. Do you find any of it offensive?

Mr. PATRICK. I have seen television programs that I found to be offensive. In fact, the Commission took an action with respect to a television station that aired product that we deemed to be indecent.

Senator EXON. Well, Mr. Patrick, I don't want to interrupt you. We re just begging the question here. I guess my first question was a lead-off with regard to kids. Adults are one thing, kids are another.

And I think as an industry, while there are some very good people in it and there are some people—the bad always rise to the occasion when they can make a buck.

I am telling you as one father and one grandfather—and I don't think I'm a kook. I don't think I'm an outrider. I don't think I want to trample on anyone's right. There is a bunch of junk on television today that is not good for those kids. Now, if we want to say in the spirit of deregulation and the free enterprise system and all that that that is part of the game we have to play, I can understand that. I just don't happen to agree with it.

Let's shift the subject because I don't think I'm going to get anywhere.

With regard to the Baby Bells, the regional Bells are asking through the House of Representatives in a bill to basically lift the court restrictions on their lines of business. What is your current thinking on the desirability of Congress lifting restrictions on what the Baby Bell companies may want to do?

Mr. PATRICK. I am in favor of taking that action, having the Congress pass legislation that would essentially consolidate jurisdiction for regulation of the telephone industry in the institution that the Congress created to regulate the telephone industry, and that is the FCC.

I think that we could debate, Senator, all day whether we should take approach A or approach B to the question of the provision of information services versus enhanced services or to the question of what the companies ought to be allowed to manufacture or to the question of whether they should be able to engage in interstate activity.

But I think it is an unassailable proposition that the industry shouldn't be subjected to two different sets of rules and regulations. So, I would request, commend and urge the Congress to pass legislation to consolidate jurisdiction in the Commission, and in the process of doing that, give us whatever guidance the Congress deems appropriate in terms of safeguards. My point is that is a separate issue. But this bifurcated jurisdiction is disserving the interests of the industry. It is disserving the interests of end users, consumers out there, and it is certainly hampering the efforts of American industry to compete internationally.

Senator EXON. Or to put it another way, you would really like to see this matter of control of the communications industry in general and the telephone industry in particular returned to the laws of the land rather than mandates of the court.

Mr. PATRICK. That's absolutely correct. You still have the telephone industry being regulated by and through the modified final judgment, a consent decree entered in an antitrust case. This Congress indicated, and I think properly, that the proper standard for the regulation of telecommunications in the United States is a broader public interest standard. And those notions were articulated well in the Communications Act. That is the standard that ought to be applied to the telephone industry. We shouldn't have the industry being regulated through the prism of one antitrust case.

Senator EXON. Shifting to another problem, looking back at the 1984 Cable Deregulation Act and looking forward into the future, as you must from time to time, certainly in 1984 the cable industry was significantly different than it is today. It has a much higher share of the market today. It is becoming more and more important. It is getting more and more control.

Do you believe that the Congress should revisit the 1984 Cable Act and make any changes? If so, what kind of changes?

Mr. PATRICK. Senator, my answer is I can't reach that judgment yet, and one of the reasons I say that is because the Congress has asked us, in the Cable Act to take another look at the state of the cable industry and specifically to look at the question of rates, rate increases, and whether or not the definition of effective competition that we articulated in response to the statutory scheme that Congress set forth was the correct one. And we are just beginning that process now. And I don't think it would be appropriate for me, even in my present status to prejudge that process. That is a process that will be conducted by Mr. Felker and his group under the direction of the Commission.

What I can say, however, is I certainly think it is appropriate for us to take another look, as you have asked us to do, and to provide that data to the Congress to determine whether some corrective action is appropriate.

My general response—and then I'll be quiet—to questions of concentration and problems in any industry—and I would say the cable industry as well—is that there are two generic options. One is to reregulate, and the other is to provide for more competition. And if I have to choose between those two options—and they are both viable—I would choose the latter. I would say get some competition out there for the cable industry and deal with the concentration problems that way.

Senator EXON. What do you say about the latest controversy that I am looking forward to that is causing a great deal of problems for us on this committee and the Members of the Congress as a whole, the storm of protest that broke in New York City when the beloved New York Yankees—not beloved from my standpoint, but beloved to an awful lot of people in New York City who could not see the New York Yankees play unless they have cable television? Is that a concern to you?

Mr. PATRICK. Well, I think it is a process that we want to watch. I tend to take the view that as we create a market in which there are more delivery vehicles, if you will, more channels of communication

into the home, those competitors are going to compete for product, for programming. And I generally don't believe that the Federal Government should interfere with that process or get in the business of deciding which medium will have access to what.

On the other hand, I think that free, over-the-air television is an extraordinarily important institution in this country, and we ought to do everything we can to ensure that that industry is able to compete on fair and equal terms. And that was one the reasons that I championed this notion of intellectual property rights and syndicated exclusivity.

Senator EXON. How many communities in the United States today have more than one cable television company available to them so they can make a choice?

Mr. PATRICK. A handful, Senator. I could get you that number, but there are very few overbuilds.

Senator EXON. You have made my point.

Do you see a day in the next 10 years when I in Lincoln, Nebraska or Montgomery County, Maryland will have a choice of two or three cable companies that I can choose among?

Mr. PATRICK. It doesn't seem likely to me, as a matter of economics, that you're going to have——

Senator EXON. That's the point. That's the point. And when you talk about more availability and more programmings and more of everything else, I just remind all that while the cable television industry in my opinion has done a great job—I especially like their sports programs. I eat it up, and I wouldn't be without it. I nevertheless say and I warn at this time that we have created in this country a near monopoly that could come home to haunt us in the future about who gets what and when. And the sooner we realize that and the sooner that people in your position with your great influence begin to speak out on it, the better chance we have of solving it before it becomes more of a problem than I think it is right now.

Mr. PATRICK. Senator, I appreciate those comments, and those certainly reflect concerns that we are hearing from many quarters.

My point about other competitors and other channels into the home goes to the question of whether they are effective competitors to cable as a deliverer of product. Let me say that more simply. If you define the market as cable, obviously cable is in nine-tenths of the cases a monopoly. If you define the market as access to video product, then you have to think about how competitive, how viable an alternative over-the-air broadcasting is. And that is my only point.

And that is not an easy issue to resolve, and it is among the things that we will look at in the inquiry that you have asked us to conduct and we will conduct.

Senator EXON. Thank you, Mr. Patrick.

Thank you, MR. Chairman.

Senator INOUYE. Thank you very much.

I listened to your response to some of the questions with some interest.

I note, for example, in response to Senator Exon, you said that you agreed that telephone companies should not be regulated through a modified final judgment, but should be subject to the laws of the land, I believe something like that. I just want to note that antitrust laws are also laws of the land.

Last year in our authorization bill, we authorized the FCC to relocate the monitoring station in Hawaii. I hope you can expedite that somehow.

This is our last meeting, I gather, and as you have indicated in your opening statement, there have been times when we have disagreed. But I am pleased because I believe that we have been able to disagree without being disagreeable, and I think that is very important.

Secondly, I would like to note that throughout the years I have had the privilege of serving in the Senate, oftentimes I have heard my colleagues criticize agencies of one sort or another because the leadership has been weak and inarticulate. But whenever we have a strong leader with a strong voice and articulate voice, the Members of Congress get a bit shaken. And you have been a strong and articulate voice. I hope you will keep your strong and articulate voice in your future endeavors.

And I believe I speak for all on this committee when I wish you well as you move along on your ladder of success.

And I would like to convey on behalf of the committee our best wishes to you and Paula Grace.

Mr. PATRICK. Thank you very much, Senator.

Senator INOUYE. I note that the big day has not been decided upon, but I suppose it will be three days after you leave.

Mr. PATRICK. Yes, something like that. Exactly. I'm waffling a bit on that question.

I've honed those abilities over the years here in my testimony.

Senator INOUYE. I thought you were strong and articulate.

Mr. PATRICK. With respect to telecom issues, Mr. Chairman.

Senator INOUYE. Well, on that happy note, I thank you very much for the service to our country.

Senator EXON. Mr. Chairman, may I just say that I want to echo your words. I think Mr. Patrick has done an outstanding job. We have not always agreed, but you always knew where he stood and he stood for something. And I salute you for the job you have done.

That is why I was appealing to you to not just go away and forget about the problems that we have because I think they are going to be ongoing. And it may well be that we will be interested in calling you back from time to time, if you will come voluntarily, to give us your expert counsel and advice as we proceed on these many matters that we have just basically touched on this morning.

Mr. PATRICK. Well, Senator, thank you very much. And, of course, I would be happy at any time to provide you with my insights, whatever they may be, on the issues as we go forward.

I want to thank this committee and thank Chairman Inouye in particular for the relationship that we have had over the past couple of years. Clearly, as you indicated, Mr. Chairman, we have not always

agreed. But I have never doubted that you have taken the positions that you have taken because you believe strongly that they were the best ways to pursue the public interest. We have been able to disagree without being disagreeable. You have been the consummate gentleman in that regard, and I appreciate it very much. And I appreciate that sort of attitude and approach by every member of this committee.

Senator INOUYE. Thank you. This may be your last official appearance before us, but I am certain this is not the last time we will hear from you.

Mr. PATRICK. Thank you, Senator.

Senator INOUYE. The meeting is adjourned.

[Whereupon, at 11:58 a.m., the subcommittee was adjourned.]

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